Supreme Court, U.S.
FILED

091197 MAR 31 2010

No. 09-

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IN THE

Supreme Court of the United States

FRED VANNATTA AND THE CENTER
TO PROTECT FREE SPEECH, INC.,

Petitioners,

v.

OREGON GOVERNMENT ETHICS COMMISSION,
FORMERLY KNOWN AS THE OREGON GOVERNMENT
STANDARDS AND PRACTICES COMMISSION;
AND STATE OF OREGON,

Respondents.

On Petition for Writ of Certiorari to the Oregon
Supreme Court

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Does the First Amendment to the United States Constitution allow the government to restrict access to policymakers by persons with "an economic interest, distinct from that of the general public" in pending matters through severe limits on lobbying expenditures, while not similarly restricting persons with opposing environmental, moral, aesthetic, personal, or ideological interests?

PARTIES TO THE PROCEEDING

The parties to the proceedings in the Oregon Supreme Court were: Mr. Fred VanNatta, an individual; the Center to Protect Free Speech, Inc., an Oregon non-profit corporation; the Oregon Government Ethics Commission (formerly known as the Oregon Government Standards and Practices Commission); and the State of Oregon.

CORPORATE DISCLOSURE STATEMENT

The Center to Protect Free Speech, Inc. has never issued any stock. No parent or publicly held corporation owns 10% or more of the Center to Protect Free Speech, Inc.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Fred VanNatta[1] and the Center to Protect Free Speech, Inc. respectfully petition for a writ of *certiorari* to the Oregon Supreme Court in *Vannatta v. Or. Gov't Ethics Comm'n*, 347 Or. 449, 468, 222 P.3d 1077 (2009).

OPINIONS AND ORDERS BELOW

The opinion of the Oregon Supreme Court is reported at 347 Or. 449, 222 P.3d 1077 (2009), and is reprinted in the Appendix. The opinion of the Circuit Court for the County of Marion is unpublished and is reprinted in the Appendix. The order of the Circuit Court for the County of Marion denying plaintiff's motion for summary judgment and granting defendant's motion for summary judgment is unpublished and is reprinted in the Appendix.

STATEMENT OF JURISDICTION

The Oregon Supreme Court issued its opinion on December 31, 2009. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a) (2006).

CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE

The First Amendment to the United States Constitution provides:

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[1] Petitioner Fred VanNatta spells his last name "VanNatta." Apparently due to a scrivener's error, the spelling in the reported Oregon Supreme Court opinion is Vannatta.

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. CONST. amend. I.

Section 244.025 of the Oregon Revised Statutes as enacted in 2007, provided that:

> (1) During a calendar year, a public official, a candidate for public office or a relative or member of the household of the public official or candidate may not solicit or receive, directly or indirectly, any gift or gifts with an aggregate value in excess of $50 from any single source that could reasonably be known to have a legislative or administrative interest in any governmental agency in which the public official holds, or the candidate if elected would hold, any official position or over which the public official exercises, or the candidate if elected would exercise, any authority.
>
> (2) During a calendar year, a person who has a legislative or administrative interest in any governmental agency in which a public official holds any official position or over which the public official exercises any authority may not offer to the public official

> or a relative or member of the household of the public official any gift or gifts with an aggregate value in excess of $50.

OR. REV. STAT. § 244.025(1)-(2) (2007).

Oregon Revised Statutes Section 244.020(8) defined "legislative or administrative interest" as follows:

> (8) "Legislative or administrative interest" means an economic interest, distinct from that of the general public, in one or more bills, resolutions, regulations, proposals or other matters subject to the action or vote of a person acting in the capacity of a public official.

OR. REV. STAT. § 244.020(8) (2007). Oregon Revised Statutes Section 244.020(5)(a) defined "gift" as follows:

> (5)(a) "Gift" means something of economic value given to a public official or a relative or member of the household of the public official:
>
> (A) Without valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, which is not extended to others who are not public officials or the relatives or members of the household of public officials on the same terms and conditions; or

> (B) For valuable consideration less than that required from others who are not public officials.
>
> (b) "Gift" does not mean:
>
> . . . .
>
> (F) Reasonable expenses paid by any unit of the federal government, a state or local government, a Native American tribe that is recognized by federal law or formally acknowledged by a state, a membership organization to which a public body as defined in ORS 174.109 pays membership dues or a not-for-profit corporation that is tax exempt under section 501(c)(3) of the Internal Revenue Code and that receives less than five percent of its funding from for-profit organizations or entities, for attendance at conventions, fact-finding mission or trip, or other meeting if the public official is scheduled to deliver a speech, make a presentation, participate on a panel or represent state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117.

OR. REV. STAT. § 244.020(5)(a), (b)(F) (2007).

Finally, section 244.350 imposes penalties for violations, as follows:

> (1) The Oregon Government Ethics Commission may impose civil penalties not to exceed:
>
> (a) Except as provided in paragraph (b) of this subsection, $5,000 for violation of any provision of this chapter or any resolution adopted under ORS 244.160.
>
> . . . .
>
> (5) In lieu of or in conjunction with finding a violation of law or any resolution or imposing a civil penalty under this section, the commission may issue a written letter of reprimand, explanation or education.

OR. REV. STAT. § 244.350(1)(a), (5) (2007).

The complete text of Oregon's Government Ethics Code, OR. REV. STAT. §§ 244.020, 244.025, 244.070 and 244.350, as of 2007, is set forth in the Appendix.

The 2007 version of the statutes was in effect at the time petitioners' claim arose. As the Oregon Supreme Court noted in its opinion, the statutes were amended in 2009. The court found that "those amendments have no bearing on our discussion" and referred to the 2007 versions. *Vannatta v. Or. Gov't Ethics Com'n*, 347 Or. 449, 454 n.4, 222 P.3d 1077, 1079 n.4 (2009) (en banc). The 2009 version of the statutes are set forth in the Appendix.

STATEMENT OF THE CASE

The Oregon Supreme Court upheld restrictions that discriminate against persons with distinct economic interests, preserving only a right, which the court conceded was "nugatory," to offer gifts that officials cannot legally accept. By enacting Oregon Revised Statutes sections 244.020 and 244.025, the Oregon legislature substantially restricted lobbying expenditures by persons with "an economic interest, distinct from that of the general public" in pending legislative or administrative matters. OR. REV. STAT. § 244.020(8) (2007). Persons with distinct economic interests were prohibited from offering more than $50 in "gifts" per year to public officials, and officials were barred from soliciting or receiving the same. OR. REV. STAT. § 244.025(1)-(3) (2007). Persons with other interests in such pending matters were not restricted. Additionally, the statutes allowed certain associations of public bodies, non-profit corporations and Native American tribes to pay for attendance at a convention or fact-finding trip notwithstanding any distinct economic interest such entities might have. OR. REV. STAT. § 244.020(5)(b)(F) (2007).

Petitioners Fred VanNatta, a registered Oregon lobbyist and timberland owner, App. at A-215 to A-216, A-226 to A-227, and the Center to Protect Free Speech, Inc. asserted a facial challenge to the statutes in Oregon Circuit Court, seeking a declaration that these lobbying restrictions violated free speech rights under both the First Amendment and the Oregon Constitution, in part because the statutes discriminated against certain speakers with economic interests. App. at A-214 to A-223. The trial court held that the statutes restricted protected expression, but rejected the discrimination argument because the restrictions were "not aimed at the content of the expression." App. at A-47. The court further held that the restrained expression was incompatible with officials' functions and responsibilities, rendering the restrictions constitutional. App. at A-44, A-58 to A-60. Petitioners' appeal was subsequently certified by the intermediate appellate court to the Oregon Supreme Court. App. at A-38 to A-40.

The Oregon Supreme Court invalidated the provisions of the statutes prohibiting persons with distinct economic interests from *offering* "gifts," as restraining expression in violation of Article I, section 8 of the Oregon Constitution. *Vannatta v. Or. Gov't Ethics Comm'n*, 347 Or. 449, 468, 222 P.3d 1077, 1087 (2009) (en banc) ("[T]he statutory restrictions on 'offer[ing]' a gift to a public official, candidate for public office, or relative or household member impermissibly restrict the right of free expression.").[2]

Yet the Oregon Supreme Court reached the opposite result with respect to the mirror-image restrictions on *receiving* "gifts." While holding that offers are protected expression, the court held that prohibiting receipt of the offered gift did not limit expression. *Vannatta*, 347 Or. at 462, 222 P.3d at 1084 ("[W]e conclude that the terms of the gift receipt restrictions limit nonexpressive conduct—not expression."). The court conceded that "any claimed right to offer a gift to a public official is essentially rendered nugatory, if a public official cannot accept it." *Vannatta*, 347 Or. at 466, 222 P.3d at 1086.[3]

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[2] In invalidating the offer restrictions, the court did not reach petitioners' discrimination argument.

Petitioners argued that by imposing discriminatory restrictions only on persons with distinct economic interests in legislative or administrative matters, the statutes violated the First Amendment. Petitioners cited *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, 98 S. Ct. 1407 (1978), *United States v. Playboy Entm't Group, Inc.*, 529 U.S. 803, 120 S. Ct. 1878 (2000), *Serv. Employees Int'l Union v. Fair Political Practices Comm'n*, 955 F.2d 1312 (9th Cir. 1992), and *Sanjour v. EPA*, 56 F.3d 85 (D.C. Cir. 1995). App. at A-198 to A-199, A-200 to A-205. The Oregon Supreme Court rejected this argument based on its holding regarding the Oregon Constitution earlier in its decision that restrictions on offers limit expression, but restrictions on receipt do not:

> We have already concluded that the receipt of gift and entertainment restrictions do not abridge the right of free expression under Oregon's constitution because, as a general matter, they regulate nonexpressive conduct, not expression. Plaintiffs fail to demonstrate that the United States Supreme Court would construe and apply the First Amendment

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[3] The court declined to address the restrictions on soliciting, based on a lack of standing. *Vannatta*, 347 Or. at 471, 222 P.3d at 1088-1089.

> to those restrictions, and yet reach a different conclusion under federal law. We are not aware of any pertinent federal authority that would compel a different answer. Because plaintiffs have not established that the receipt of gift and entertainment restrictions deny a First Amendment right, their contentions regarding the alleged discriminatory application of those restrictions to different classifications of persons are unavailing.

Vannatta, 347 Or. at 471, 222 P.3d at 1089.

Twenty days after the Oregon Supreme Court's decision, this Court issued its opinion in *Citizens United v. Fed. Election Comm'n*, 558 U.S. ___, 130 S. Ct. 876 (2010), reaffirming the First Amendment bar on discrimination among speakers, as articulated in *Bellotti*, and clarifying the basis for that bar.

Petitioners now ask this Court to decide whether the constitutional prohibition on discrimination among speakers, as clarified by *Citizens United*, can co-exist with statutes that restrict lobbying by persons with "an economic interest, distinct from that of the general public," while imposing no such restrictions on persons with equally distinct environmental, moral, aesthetic, personal or ideological interests (nor, with respect to certain activities, on 501(c)(3) organizations, government entities, and Native American tribes with particular economic interests).

REASONS FOR GRANTING THE WRIT

The Oregon legislature has chosen a category of participants in the political process—those having "an economic interest, distinct from that of the general public"—and declared that members of that category, and that category alone, cannot have the same access to policymakers as other political participants. In particular, the Oregon statutory scheme restricts those with economic interests from giving "gifts"—broadly defined as "something of economic value"—to certain policymakers "with an aggregate value in excess of $50" in any calendar year. OR. REV. STAT. §§ 244.020(5)(a), 244.025(1). Thus, persons who, for example, seek to protect salmon for ecological or moral reasons by lobbying for legislation to close the sport and commercial fishing season or to remove dams may pay travel and lodging expenses associated with a fact-finding mission for legislators to witness the impact of fishing and dams on endangered fish. Such persons may also pay for meals at which these issues may be discussed with legislators and public officials. However, those with economic interests in preserving fishing are prevented from providing such trips or meals. As explained below, the First Amendment does not permit such unequal treatment of participants in the political process.

The statutory scheme at issue here, like similar laws in other states, appears to be directed at the perceived evils of lobbying. However, neither the subject Oregon statutes nor the decision of the Oregon Supreme Court can be justified by broad assertions as to the evils of lobbying or the use of money to exercise First Amendment rights to communicate with policymakers. Neither the statutes nor the decision ban those activities outright. Instead, they ban only a category of lobbying and "gift" gifting—that undertaken to advance economic interests. Just as there is no reason to penalize corporations in the exercise of First Amendment rights, *see Citizens United*, 130 S. Ct. at 905, there is no reason to penalize those who advance economic interests. It is every bit as likely that a lobbyist who is being paid to advance *non-economic* interests might overstep boundaries in giving "gifts" to policymakers as it is that one who has been hired to advance *economic* interests will do so. There is no reason to assume that the nature of the interest, as categorized by the Oregon legislature, governs the lobbying practices of those who seek to advance the interest.

A. Restrictions that discriminate in favor of "preferred" speakers violate the First Amendment right to establish one's own voice.

Discrimination against speakers violates the First Amendment. *See Bellotti*, 435 U.S. at 777 ("The inherent worth of the speech in terms of its capacity for informing the public does not depend upon the identity of its source, whether corporation, association, union, or individual."). Accordingly, the First Amendment prohibits the government from favoring certain "preferred" speakers by imposing burdens on the speech of other, disfavored speakers. *Citizens United*, 130 S. Ct. at 899.

Citizens United makes clear that the First Amendment protects against *any* discrimination among speakers—whether or not the discrimination is based on content or viewpoints. Discrimination among speakers is often a means of imposing content-based restrictions. *See, e.g., Playboy*, 529 U.S. at 812-813 (applying strict scrutiny to strike down restrictions only on channels "primarily dedicated to sexually-oriented programming"). But statutes need not target or affect content to be unconstitutionally discriminatory. *Citizens United*, 130 S. Ct. at 899 ("Quite apart from the purpose or effect of regulating content . . . the Government may commit a constitutional wrong when by law it identifies certain preferred speakers."). Nor do statutes need to target particular viewpoints to be unconstitutionally discriminatory. *Id.* at 903 ("It is important to note that the reasoning and holding of *Bellotti* did not rest on the existence of a viewpoint-discriminatory statute.").

Rather, the constitutional prohibition on discrimination against speakers has roots in the First Amendment "right to use speech to strive to establish worth, standing, and respect for the speaker's voice." *Citizens United*, 130 S. Ct. at 899. This right, in turn, reflects the very broad First Amendment freedom to express personal views and persuade others to adopt them. *See, e.g., Mills v. Alabama*, 384 U.S. 214, 219, 86 S. Ct. 1434, 1437 (1966) (protecting newspaper's right to make endorsements); *Thomas v. Collins*, 323 U.S. 516, 537, 65 S. Ct. 315, 326 (1945) ("Free trade in ideas means free trade in the opportunity to persuade to action, not merely to describe facts") (internal quotation marks omitted). The right extends to both natural persons and organizations. *Bellotti*, 435 U.S. at 777. While the government may place limits on contributions to other's campaigns, no such limits are allowed on expenditures to promote a person's own message. *Buckley v. Valeo*, 424 U.S. 1, 58-59, 96 S. Ct. 612, 653-654 (1976).

B. First Amendment discrimination protections extend to lobbying expenditures.

Lobbying expenditures merit First Amendment protection because they are integral to efforts to communicate with officials to influence legislation. *See United States v. Harriss*, 347 U.S. 612, 625, 74 S. Ct. 808, 816 (1954) (describing lobbyists as "those who for hire attempt to influence legislation or who collect or spend funds for that purpose"); OR. REV. STAT. § 171.725(8) (2007) (defining lobbying involving "influencing, or attempting to influence, legislative action" and "attempting to obtain the goodwill of legislative officials").

In *Buckley*, this Court recognized that expenditures made to influence legislation merit First Amendment protection, just as expenditures made to influence voters are protected; the Court invoked the First Amendment protection of *legislative* advocacy to emphasize the high protection for analogous *election* advocacy. 424 U.S. at 48 ("Advocacy of the election or defeat of candidates for federal office is no less entitled to protection under the First Amendment than the discussion of political policy generally or advocacy of the passage or defeat of legislation.").

Accordingly, the legislature has no power to ban lobbying. *See Citizens United,* 130 S. Ct. at 915 ("Congress has no power to ban lobbying itself.") (citing *Harriss*, 347 U.S. at 625). Whether the speaker is an individual, a corporation, or a lobbyist, advocacy of policy interests is "indispensable to decisionmaking in a democracy." *See Bellotti*, 435 U.S. at 777.

Indeed, the First Amendment often thwarts legislative attempts to restrict persons from effectively communicating their chosen political messages. *See, e.g.*, *Mills*, 384 U.S. at 218-219 (striking down ban on election day endorsements by newspapers); *Citizens United* (striking down ban on independent political expenditures); *Buckley*, 424 U.S. at 45-50 (striking down campaign expenditure limits). In contrast, the First Amendment allows restrictions that add to the flow of information by requiring disclosures. *See, e.g.*, *Harriss*, 347 U.S. at 625 (upholding lobbying registration and disclosure requirements); *McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 196, 124 S. Ct. 619, 690 (2003) (rejecting facial challenge to disclaimer and disclosure requirements); *Citizens United*, 130 S. Ct. at 915 (rejecting as-applied challenge to disclosure requirements). In *Harriss*—reflecting the different treatment of permissible, information-producing regulations and impermissible impediments to information—this Court narrowly construed disclosure restrictions on lobbyists to avoid deterring exercise of First Amendment rights "as a practical matter." *Harriss*, 347 U.S. at 626.

C. Strict scrutiny applies to discriminatory burdens on political speech

Laws that burden political speech are "subject to strict scrutiny," which requires the government to prove that the restriction "furthers a compelling interest and is narrowly tailored to achieve that interest." *Citizens United*, 130 S. Ct. at 898 (citing *Fed. Election Comm'n v. Wis. Right to Life, Inc.*, 551 U.S. 449, 464, 127 S. Ct. 2652, 2664 (2007) (opinion of Roberts, C. J.)); *but see Buckley*, 424 U.S. at 25-26 (interference with rights of political association is constitutionally permissible only if the government demonstrates "a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgment of associational freedoms").

Discrimination among speakers independently requires a compelling justification. *See Bellotti*, 435 U.S. at 786 (statute restricting corporate political speech was subject to "exacting scrutiny" and required "a subordinating interest which is compelling"); *Serv. Employees Int'l Union*, 955 F.2d 1312, 1321 (holding that preventing corruption and the appearance thereof did not justify a restriction that discriminated among different speakers).

Prohibiting the appearance of special "influence" or "access" is not a significant governmental interest. *Citizens United*, 130 S. Ct. at 910 ("The appearance of influence and access . . . will not cause the electorate to lose faith in our democracy."). This Court recognized in *Buckley* that elimination of the appearance of corruption is a significant governmental interest. *Buckley*, 424 U.S. at 25. However, as the Court explained in *Citizens United*, the appearance of corruption in *Buckley* was limited to *quid pro quo* corruption, and independent expenditures raise no appearance of a *quid pro quo*. *Citizens United*, 130 S. Ct. at 909-10 ("The fact that speakers may have influence over or access to elected officials does not mean that these officials are corrupt: . . . .").

Likewise, corporate power is no justification for withholding First Amendment protection. *See id.* at 904 (citing *United States v. Auto. Workers*, 352 U.S. 567, 597, 77 S. Ct. 529, 544 (1957) (Douglas, J., dissenting)). "Corporations and other associations, like individuals, contribute to the 'discussion, debate, and the dissemination of information and ideas' that the First Amendment seeks to foster." *Citizens United v. Fed. Election Comm'n*, 130 S. Ct. at 900 (quoting *Pac. Gas & Elec. Co. v. Public Util. Comm'n of Cal.*, 475 U.S. 1, 8, 106 S. Ct. 903, 907 (1986) (plurality op.) (quoting *Bellotti*, 435 U.S. at 783)). In *Citizens United*, this Court squarely rejected efforts to burden corporations to level the political playing field. *See id.* at 905.

While a narrow exception permits discrimination among speakers where necessary to allow governmental functions, the exception does not extend to discrimination with respect to the political process. The exception is limited to restrictions necessary for certain governmental functions to operate at all, *Citizens United*, 130 S. Ct. at 899, and generally concerns government institutions such as schools, prisons, the civil service, and the military. *See, e.g., Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 682, 106 S. Ct. 3159, 3164 (1986) (schools); *Jones v. N.C. Prisoners' Labor Union, Inc.*, 433 U.S. 119, 129, 97 S. Ct. 2532, 2540 (1977) (prisons); *Civil Serv. Comm'n v. Letter Carriers*, 413 U.S. 548, 567, 93 S. Ct. 2880, 2891 (1973) (post office employees); *Parker v. Levy*, 417 U.S. 733, 758, 94 S. Ct. 2547, 2563 (1974) (military personnel). The exception applies largely to speakers in institutions that require a degree of isolation from politics to function—unlike, for example, the state legislature.

D. Oregon's statutes favor speakers with legislatively preferred non-economic policy interests

Wherever economic concerns must be weighed against other non-economic interests, the Oregon statutes hobble persons on one side of a political issue. Those statutes advantage persons whose distinct interests are environmental, moral, aesthetic, personal or ideological, rather than economic (with exceptions—themselves discriminatory—for government entities, 501(c)(3) organizations, and Native American tribes).[4] The following examples illustrate how the statutes advantage "preferred" speakers.

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[4] The 2007 version of section 244.020(5)(b)(F) provided for exemptions to the gift restrictions for 501(c)(3) organizations that received less than five percent of their funding from for-profit corporations or entities. OR. REV. STAT. § 244.020(5)(b) (2007). The 2009 legislature amended that section, renumbered as section 244.020(6)(b)(F), extending the

To build support for a bill that would limit timber harvesting, an environmental organization takes a key legislator on a fact-finding trip to several small woodlands, several hundred miles from the state capital, paying more than $50 in meals and lodging. The gift limits of Oregon Revised Statutes Section 244.025 do not apply to the organization, because it lacks "an economic interest, distinct from that of the general public" in the timber and wildlife. OR. REV. STAT. § 244.020(8) (2007); *cf. Sierra Club v. Morton*, 405 U.S. 727, 741, 92 S. Ct. 1361, 1369 (1972) (noneconomic interest of environmental group was not individualized harm required for standing). Therefore, the environmental organization does not have a "legislative or administrative interest" under the statute, notwithstanding its distinct interest in the legislation. *See* OR. REV. STAT. § 244.020(8) ("'Legislative or administrative interest' means an economic interest, distinct from that of the general public.").

In opposition to the same bill, a timber company whose mill is threatened with closure offers to fund a similar fact-finding trip. The *offer* is protected speech, but the legislator could be reprimanded and fined $5,000 for *accepting* the offer and going on the trip. OR. REV. STAT. § 244.350(1)(a), (5). The company would have a "legislative or administrative interest" as defined by the statute. *See* § 244.020(8)

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exemption to all 501(c)(3) organizations. OR. REV. STAT. § 244.020(6)(b)(F) (2009)

("'Legislative or administrative interest' means an economic interest, distinct from that of the general public."). Therefore, the legislator could not accept more than $50 in "gifts" from the company. *See* § 244.025(1) ("During a calendar year, a public official . . . may not solicit or receive . . . any gift or gifts with an aggregate value in excess of $50 from any single source that could reasonably be known to have a legislative or administrative interest . . . ."). Because "gift" is defined broadly, anything of economic value—like meals, lodging, and transportation for a fact-finding trip—is a "gift." *See* § 244.020(5)(a) ("'Gift' means something of economic value given to a public official or a relative or member of the household of the public official . . . .").

In opposition to the same bill, a group of mill workers, whose pay is threatened by the legislation, offers to fund a similar fact-finding trip. Again, the *offer* is constitutionally protected, but the legislator could be reprimanded and fined for *accepting* the offer and taking the trip, OR. REV. STAT. § 244.350(1)(a), (5), because the mill workers have a "legislative or administrative interest" as defined by the statute. *See* § 244.020(8) ("'Legislative or administrative interest' means an economic interest, distinct.").

Finally, assume that the environmental organization is a 501(c)(3) entity not funded by for-profit entities. In that case, it could fund the fact-finding trip even if it acquired a distinct economic interest (perhaps by purchasing the land in question). *See* § 244.020(5)(b)(F) (2007) (excluding from definition of "Gift" all "[r]easonable expenses paid by . . . a not-for-profit corporation that is tax exempt under section 501(c)(3) of the Internal Revenue Code and that receives less than five percent of its funding from for-profit organizations or entities, for attendance at a . . . fact-finding mission or trip . . . ."). The 2009 amendment extended the exception to all 501(c)(3) organizations, making the discrimination even more egregious. OR. REV. STAT. § 244.020(6)(b)(F) (2009).

As these examples illustrate, the Oregon statutes have profoundly different effects on persons or entities on opposite sides of the very same pending political matter, each having a distinct and legitimate interest. A person or entity with only favored, non-economic interests can freely make lobbying expenditures, while a person or entity with a disfavored, distinct economic interest is limited to $50 per year.

A broad range of moral, aesthetic, personal, and ideological interests receive similar preferential treatment. An animal rights group with a moral interest in a bill restricting hunting would be exempt from the restrictions, while a seller of hunting goods, which has a distinct economic interest in continued hunting, would be restricted. A group with an aesthetic interest in a bill regulating the appearance of cellular phone towers would be exempt from the restrictions, while a telecommunications company that owned the towers would be restricted. A national party committee with an ideological interest in a bill reducing union dues would be exempt from the restrictions, while a union, with an economic interest in its funds, would be restricted. A person seeking service hour restrictions on taverns, because he had been injured by a drunk driver, would be exempt from the restrictions, because his interest is merely personal, while a tavern owner, whose business was threatened, would be restricted.

Oregon is not alone in imposing discriminatory lobbying restrictions.[5]

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[5] Restrictions in other states similarly favor those without distinct economic interests in legislation. Iowa imposes gift restrictions on "restricted donor[s]," defined to include persons that "[w]ill personally be, or is the agent of a person who will be, directly and substantially affected financially by the performance or nonperformance of the donee's official duty in a way that is greater than the effect on the public generally or on a substantial class of persons to which the person belongs as a member of a profession, occupation, industry, or region." IOWA CODE §§ 68B.2(24)(b) and 68B.22(1)-(2) (2009). West Virginia prohibits public servants from accepting certain gifts from "financial interests which may be substantially and materially affected, in a manner distinguishable from the public generally. . . ." in the servant's duties (as well as any lobbyist, person seeking to do business with the servant's agency, or person regulated by the servant's agency). W. VA. CODE § 6B-2-5(c)(1)(A), (C) (2008). Maryland prohibits officials from receiving gifts from persons doing business with their government unit, and places additional restrictions on persons with "a financial interest that may be affected substantially and materially, in a manner distinguishable from the public generally . . . ." MD. CODE ANN., STATE GOV'T §15-505(b)(3) (2009) set forth in the Appendix. Colorado generally imposes a $50 annual limit on gifts, but defines "gifts" to allow certain expenses paid by non-profit organization, state and local governments for conventions, speeches, and fact-finding trips—so long as the giver receives less than 5% revenue from for-profits entities. COLO. CONST. art. XXIX, § (3)(2), (3)(3)(f).

The practical impact of the discrimination is significant. Restricting payment from persons with distinct economic interests places a significant burden on the ability of those persons to advance their political messages. In *United States v. Nat'l Treasury Employees Union*, 513 U.S. 454, 115 S. Ct. 1003 (1995), this Court held that a similar ban on private payments directly to officials for speech-related activities violated the First Amendment, finding that the ban was a "wholesale deterrent to a broad category of expression," and "a sweeping statutory impediment to speech," 513 U.S. at 467. The Court rejected the argument that the ban merely removed an incentive for speech, finding instead that it significantly burdened expression. *Id.* at 468-469.

Similarly, in *Sanjour v. EPA*, 56 F.3d 85 (D.C. Cir. 1995), the circuit court invalidated regulations prohibiting EPA employees from receiving private travel reimbursement for unofficial speaking or writing engagements concerning the subject matter of their work, but allowing private reimbursement for officially approved engagements. *Sanjour*, 56 F.3d at 89, 99. The court held that the restrictions on private reimbursement inhibited speech. "The challenged regulations clearly prevent [officials] from addressing current government policies, perhaps the paradigmatic 'matter[ ] of public concern.'" *Id.* at 91 (quoting *Pickering v. Bd. of Educ.*, 391 U.S. 563, 568, 88 S. Ct. 1731, 1734-35 (1968)) (first alteration added).

Lobbying expenditures are unquestionably effective tools for engendering goodwill, which in turn enhances influence on policy. Even critics of lobbying recognize the effectiveness of lobbying practices in making one's political voice heard. The Oregon laws at issue deny these tools to a particular, disfavored class of persons —those with distinct economic interests. The First Amendment does not allow such selective exclusion from the political arena. Depriving a person of the ability to pay for "gifts," such as a series of lunches or a fact-finding trip, sharply curtails his ability to access and inform officials, and to thereby influence action. As a result of the challenged statutes, legislators are effectively denied the opportunity to become informed by parties having an economic interest in the outcome of a pending matter.

E. Oregon's restrictions are unconstitutional because they exempt preferred speakers with non-economic interests.

The Oregon restrictions are unconstitutional because they exempt preferred speakers with non-economic interests. Petitioners ask this Court to strike down limits on independent expenditures to inform legislators and other government officials, just as *Buckley* and *Citizens United* struck down restrictive limits on independent expenditures to inform voters. *Cf. Buckley*, 424 U.S. at 45-50; *Citizens United*, 130 S. Ct. at 913. The lobbying expenditures restricted in Oregon are no less independent political expenditures than the expenditures to make a film in *Citizens United*, or the campaign expenditures in *Buckley*. As in *Mills* and *Citizens United*, the effect of the challenged regulation is to suppress a speaker's individual message. That is, the restrictions limit attempts to "establish worth, standing, and respect for the speaker's voice." *Citizens United*, 130 S. Ct. at 899.

Citizens United struck down a law that "by its own terms, exempt[ed] some corporations and covers others, even though both have the need or the motive to communicate their views." 130 S. Ct. at 906. Here, the Oregon statutes, by their terms, restrict only speakers with particular economic interests in legislation, effectively restricting business interests. Yet those statutes exempt persons having other types of interests in legislation—whether moral, political, ideological, aesthetic, or environmental. Certainly, moral, political, ideological, aesthetic, and environmental interests are important. But they are not *more important* than economic interests. And there is no substantial, much less compelling, governmental interest in favoring the former over the latter. By the challenged statutes, the government effectively identifies "preferred" speakers, and confers on those speakers a tremendous advantage in the political arena. This is a "constitutional wrong." *See Citizens United*, 130 S. Ct. at 899 ("Government may commit a constitutional wrong when by law it identifies certain preferred speakers.").

Unlike the disclosure requirements upheld in *Buckley*, *Citizens United*, *Harriss*, and *McConnell*, the lobbying restrictions at issue here impede, rather than enhance, the flow of information. The restrictions, at minimum, deter the exercise of First Amendment rights "as a practical matter." *Cf. Harriss*, 347 U.S. at 626. The restrictions make it far more difficult to gain access to officials, obtain their goodwill, and influence legislative and administrative action. *See* OR. REV. STAT. § 171.725(8) (2007) (defining "lobbying" as "influencing, or attempting to influence, legislative action" or "attempting to obtain the goodwill of legislative officials."); OR. REV. STAT. § 171.725(8) (2009) (unchanged).

F. There is no compelling government interest in Oregon's discriminatory limits on lobbying expenditures.

State legislatures may well be concerned that lobbyists are allowed to use "gifts" to ingratiate themselves with officials or gain access to the political process. But that concern does not justify restrictions on political advocacy. As explained above, *infra* at 15, following *Citizens United*, the only governmental interests that could justify the restrictions challenged here are *quid pro quo* corruption or the appearance thereof. "Ingratiation and access, in any event, are not corruption." *Citizens United*, 130 S. Ct. at 910.

> "Favoritism and influence are not . . . avoidable in representative politics. It is in the nature of an elected representative to favor certain policies, and, by necessary corollary, to favor the voters and contributors who support those policies. It is well understood that a substantial and legitimate reason, if not the only reason, to cast a vote for, or to make a contribution to, one candidate over another is that the

> candidate will respond by producing those political outcomes the supporter favors. Democracy is premised on responsiveness."

Citizens United, 130 S. Ct. at 910 (quoting *McConnell*, 540 U. S. at 297 (opinion of Kennedy, J.)).

Moreover, with respect to expenditure limits, "the governmental interest in preventing corruption and the appearance of corruption is inadequate to justify [a] ceiling on independent expenditures." *See Buckley*, 424 U.S. at 45. *Quid pro quos* are dealt with under existing bribery laws. *See* OR. REV. STAT. §§ 162.015, 162.025 (2009) (prohibiting bribery). Existing disclosure requirements provide public information about lobbying. *See* §§ 171.735(4), 171.745(1), 244.070 (2007).[6] Such disclosures allow voters to regulate officials' receipt of lobbying expenditures through the ballot box.

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[6] Any person who spends over 24 hours or $100 in one calendar quarter on enumerated lobbying activities is required to register as a lobbyist. OR. REV. STAT. § 171.735(4) (2007). Registered lobbyists must file the expenditure reports with the state. OR. REV. STAT. § 171.745(1) (2007). The disclosure must include the "total amount of all moneys expended for food, refreshments and entertainment by the lobbyist for the purpose of lobbying," OR. REV. STAT. § 171.745(1)(a) (2007), and any lobbying expenditures for the benefit of a legislative or executive public official on any single occasion and the cost exceeds $50. OR. REV. STAT. § 171.745(1)(b) (2007). The lobbyists' employer is further required to report the total amount of all moneys expended for lobbying activities on the person's behalf (excluding living and travel expenses for the lobbyist). In addition, section 244.070 requires additional reporting of economic benefits from individuals or businesses that have a "legislative or administrative interest" on that "has been doing business, does business or could reasonably be expected to do business" with a government entity over which

If the disparate treatment of entities with economic interests (*e.g.*, corporations) and those without (*e.g.*, citizen groups) mandated by Oregon Revised Statutes Section 244.025 rests on distrust of corporate power, *Citizens United* has severely undermined that rationale. 130 S. Ct. at 905. The government cannot simply assume that non-profit organizations are less corrupt than for-profit corporations. Just as a corporation may be a "good citizen," a non-profit organization may be a "bad apple."

If the statutes at issue were motivated by a desire to avoid the appearance of corruption, it is difficult to explain the exceptions. Section 244.020(5)(b)(F) exempts expenditures made by government entities, Native American tribes, and 501(c)(3) organizations for fact-finding trips, attendance at conventions, or speeches by public officials—notwithstanding any particularized economic interests those entities may have. Native American tribes, for example, operate eight casinos in the state of Oregon. There is no less risk of corruption or the appearance of it when the person making the expenditure is the owner of a gambling casino as opposed to the owner of timberland. There is no rational basis for the discrimination, much less

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an official has any authority. OR. REV. STAT. § 244.070 (2007). The 2009 versions of the aforementioned statutes are materially identical. OR. REV. STAT. §§ 171.735(4), 171.745(1), 244.070 (2009).

the requisite compelling justification. *See Wis. Right to Life, Inc.*, 551 U.S. at 464; *Bellotti*, 435 U.S. at 786.

"[I]t is inherent in the nature of the political process that voters must be free to obtain information from diverse sources to determine how to cast their votes." *Citizens United*, 130 S. Ct. at 899. Just as voters must have access to a full range of information, so too must legislators who cast votes on behalf of their constituents. Limiting the flow of information to officials is inimical to the function of democratic institutions. *See Bellotti*, 435 U.S. at 783 ("[T]he First Amendment . . . prohibit[s] government from limiting the stock of information from which members of the public may draw."). The sources of information available to public officials include face-to-face discussions with stakeholders and on-site fact-finding missions. Such opportunities to educate policymakers about issues are vital, but decision-makers with limited budgets may not be able to avail themselves of those opportunities absent lobbying expenditures. The challenged statutes would obstruct this information when it comes from persons with a particularized economic interest, *e.g.*, most of the business community.

G. Facial invalidation is the appropriate remedy

A law may be facially invalidated under the First Amendment if it is substantially overbroad, that is, if the overbreadth is both real and substantial, "judged in relation to the statute's plainly legitimate sweep." *Broadrick v. Oklahoma*, 413 U.S. 601, 614-616, 93 S. Ct. 2908, 2918 (1973). The challenged statutes are substantially overbroad because much of the barred lobbying activity raises no appearance of corruption (as opposed to the appearance of access and influence). For example, payment of $51 in travel expenses for legislators and government officials to witness the plight of farmers who must curtail their irrigation practices to increase water flows for certain fish creates no appearance of corruption. Yet the Oregon statutes prohibit such payment because the farmers have a distinct economic interest. The statute is not narrowly tailored as it must be to survive. *See Citizens United*, 130 S. Ct. at 898. An overbroad ban on private payments to officials cannot stand. *See Nat'l Treasury Employees Union*, 513 at 477 ("The speculative benefits the honoraria ban may provide the Government are not sufficient to justify this crudely crafted burden on respondents' freedom to engage in expressive activities. Section 501(b) violates the First Amendment.").

Even if the statutes could legitimately limit First Amendment rights based solely on the appearance of corruption, the Oregon statutes are also substantially under-inclusive, because they leave many persons free to operate without restriction. For example, the law permits national political parties to buy dinners for legislators to advocate their redistricting plans, since the political party has no distinct economic interest in redistricting (notwithstanding its distinct and substantial political interests). Similarly, the law permits payment by Native American tribes who own casinos for legislators to speak at their establishments. Such underinclusiveness is a basis for invalidation. *See Florida Star v. B.J.F.*, 491 U.S. 524, 540, 109 S. Ct. 2603, 2612 (1989) (invalidating statute restricting publication by only one of several means, noting that "facial underinclusiveness . . . raises serious doubts about whether [the state] is serving the interests specified by [the state].").

Even if the relevant statutes have valid applications (*e.g.*, conduct involving a genuine *quid pro quo*, already prohibited under bribery statutes) the substantial areas of invalidity require either facial invalidation, or a narrowing construction. *See, e.g.*, *Broadrick*, 413 U.S. at 618 (applying narrowing construction). Here, a narrowing construction is inappropriate because it would require judicial line-drawing around conduct that might well create the appearance of corruption. Establishing the perimeter of the narrowed statute would require many years and many cases and, in the meantime, would chill political speech. *Cf. Citizens United*, 130 S. Ct. at 892 ("First Amendment freedoms require breathing space to survive. . . . We decline to adopt an interpretation that requires intricate case-by-case determinations to verify whether political speech is banned . . . .") (quotations and internal citations omitted). Because the statute as enacted is unconstitutional and a narrowing construction is neither practical nor desirable, facial invalidation is required.

CONCLUSION

The Oregon statutes embody a dubious legislative determination that lobbying for economic interests distorts the political process in ways that lobbying for other interests does not. The resulting statutes discriminate against persons whose political interests are economic in nature, subject to exceptions that are themselves discriminatory. Such discrimination violates the First Amendment. The rationale that corporate speech distorts politics, rather than being an essential component of democracy, was soundly rejected in *Citizens United.* The Oregon Supreme Court, by protecting only an illusory "right" to make an offer that an official must refuse, failed to right the Constitutional wrong. Petitioners respectfully request a writ of certiorari so that this Court may do so.

Respectfully submitted,

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APPENDIX

Supreme Court of Oregon,
En Banc.

Fred VANNATTA and Center to Protect Free
Speech, Inc., an Oregon Not-For-Profit Corporation,
Plaintiffs-Appellants,

v.

OREGON GOVERNMENT ETHICS COMMISSION,
formerly known as the Oregon Government
Standards and Practices Commission; and State of
Oregon, Defendants-Respondents.

(CC 07C20464; CA A140080; SC S057570).

Argued and submitted Aug. 13, 2009.
Decided Dec. 31, 2009.

John DiLorenzo, Jr., Davis Wright Tremaine LLP, Portland, argued the cause for plaintiffs-appellants. With him on the briefs were Gregory A. Chaimov, Aaron K. Stuckey, and Alan J. Galloway.

Anna M. Joyce, Assistant Attorney General, Salem, argued the cause for defendants-respondents. With her on the brief were John R. Kroger, Attorney General, and Jerome Lidz, Solicitor General.

Linda K. Williams, Portland, and Daniel W. Meek, Portland, filed a brief on behalf of amici curiae Joan

Horton, Ken Lewis, Bryn Hazell, Francis Nelson, Tom Civiletti, David Delk and Gary Duell.

DE MUNIZ, C.J.

Plaintiffs Fred Vannatta and the Center to Protect Free Speech brought this action for declaratory and injunctive relief, asserting that ORS 244.025(1)-(4) and ORS 244.042 (which, in general terms, regulate the solicitation, offering, and receipt of gifts by certain public and other persons) violate Article I, sections 8 and 26, of the Oregon Constitution and the First Amendment to the United States Constitution and therefore are unenforceable. We discuss the content of those statutes in greater detail below.

The trial court rejected plaintiffs' constitutional arguments and granted summary judgment in favor of defendants (the state). On review, this court views the facts and all reasonable inferences that may be drawn from them in favor of the nonmoving party-in this case, plaintiffs. *Jones v. General Motors Corp.*, 325 Or. 404, 408, 939 P.2d 608 (1997). Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. ORCP 47 C. Plaintiffs assert that there are no factual disputes in this case and that this court should review the trial court's decision for errors of law. The state does not contest that characterization.

We take the facts from the trial court record on summary judgment. Plaintiff Center to Protect Free

Speech, Inc. (Center) is a not-for-profit Oregon corporation. Plaintiff Vannatta is an elector and taxpayer and serves as the president of and registered lobbyist for Center. As described in their amended complaint, Vannatta and Center intend to engage in conduct that would violate the statutory gift restrictions in ORS chapter 244, including:

> "[O]btaining the good will of public officials and candidates for public office through offering and providing public officials, their families and candidates for public office entertainment, business meals with an aggregate value of more than $50 in a calendar year in connection with their discussions, and honorariums in connection with official duties."

Plaintiffs assert that, because of the restrictions in ORS 244.025 and ORS 244.042, "plaintiffs and some (but not all) other lobbyists in Oregon are prevented from engaging" in those activities and those activities are forms of expression protected by the state and federal constitutions.

In an opinion letter, the trial court agreed with plaintiffs that the statutes at issue in this case regulate gifts that are forms of constitutionally protected expression. However, the trial court concluded that the regulation of that form of expression is permissible, in part because giving gifts to public officials or candidates can create the appearance of bribery, corruption, and impropriety. The trial court later entered a general judgment in favor of the state that declared that the statutory provisions challenged by plaintiffs are valid and enforceable.[1]

In this court, plaintiffs argue that ORS 244.025[2] and

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[1] Plaintiffs appealed the judgment, and, pursuant to Oregon Laws 2009, chapter 277, section 1, the parties filed a joint motion in the Court of Appeals to certify the appeal to this court. As required, the Court of Appeals granted that motion on July 13, 2009, and this court accepted certification that same day.

[2] ORS 244.025 provides, in part:

> "(1) During a calendar year, a public official, a candidate for public office or a relative or member of the household of the public official or candidate may not solicit or receive, directly or indirectly, any gift or gifts with an aggregate value in excess of $50 from any single source that could reasonably be known to have a legislative or administrative interest in any governmental agency in which the public official holds, or the candidate if elected would hold, any official position or over which the public official exercises, or the candidate if elected would exercise, any authority.
>
> "(2) During a calendar year, a person who has a legislative or administrative interest in any governmental agency in which a public official holds any official position or over which the public official exercises any authority may not offer to the public official or a relative or member of the household of the public official any gift or gifts with an aggregate value in excess of $50.
>
> "(3) During a calendar year, a person who has a legislative or administrative interest in any governmental agency in which a candidate for public office if elected would hold any official position or over which the candidate if elected would exercise

ORS 244.042[3] impermissibly restrain free expression

> any authority may not offer to the candidate or a relative or member of the household of the candidate any gift or gifts with an aggregate value in excess of $50.
>
> "(4) Notwithstanding subsection (1) of this section:
>
> "(a) A public official, a candidate for public office or a relative or member of the household of the public official or candidate may not solicit or receive, directly or indirectly, any gift of payment of expenses for entertainment from any single source that could reasonably be known to have a legislative or administrative interest in any governmental agency in which the public official holds, or the candidate if elected would hold, any official position or over which the public official exercises, or the candidate if elected would exercise, any authority.
>
> "(b) A person who has a legislative or administrative interest in any governmental agency in which a public official holds any official position or over which the public official exercises any authority may not offer to the public official or a relative or member of the household of the public official any gift of payment of expenses for entertainment.
>
> "(c) A person who has a legislative or administrative interest in any governmental agency in which a candidate for public office if elected would hold any official position or over which the candidate if elected would exercise any authority may not offer to the candidate or a relative or member of the household of the candidate any gift of payment of expenses for entertainment."

[3] ORS 244.042 provides:

> "(1) Except as provided in subsection (3) of this section, a public official may not solicit or receive,

and lobbying activities in violation of Article I, section 8, of the Oregon Constitution and the First Amendment to the United States Constitution by, among other things, prohibiting expenditures designed to facilitate dialogue and obtain goodwill with public officials. Plaintiffs also argue that the restrictions impermissibly discriminate between different types of speech and different classifications of speakers. Finally, plaintiffs argue that the statutory restrictions violate Article I, section 26, of the Oregon Constitution in that they impermissibly restrain plaintiffs' rights to instruct their representatives and to apply to the Legislative

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whether directly or indirectly, honoraria for the public official or any member of the household of the public official if the honoraria are solicited or received in connection with the official duties of the public official.

"(2) Except as provided in subsection (3) of this section, a candidate for public office may not solicit or receive, whether directly or indirectly, honoraria for the candidate or any member of the household of the candidate if the honoraria are solicited or received in connection with the official duties of the public office for which the person is a candidate.

"(3) This section does not prohibit:

"(a) The solicitation or receipt of an honorarium or a certificate, plaque, commemorative token or other item with a value of $50 or less; or

"(b) The solicitation or receipt of an honorarium for services performed in relation to the private profession, occupation, avocation or expertise of the public official or candidate."

Assembly for the redress of grievances.

ORS chapter 244, sometimes described as the "code of government ethics," was referred to the people by the legislature and adopted by the voters in 1974. ORS chapter 244 is designed " 'to deter violation of the legislative policy of safeguarding the public trust inherent in holding a public office.' " *City of Tualatin v. City-County Ins. Services Trust*, 321 Or. 164, 172, 894 P.2d 1158 (1995) (quoting *Groener v. Oregon Gov't Ethics Comm.*, 59 Or.App. 459, 469, 651 P.2d 736 (1982)). Since its enactment, the code of government ethics has placed restrictions on the solicitation and receipt of gifts or favors in excess of $100 by public officials or candidates for office. *Former* ORS 244.040(1)-(2), (5) (2005). In 2007, however, the legislature enacted Senate Bill (S.B.) 10 (2007), which made several amendments to the code of government ethics, including lowering the monetary limit on certain gifts to $50. Or. Laws 2007, ch. 877, § 18. Plaintiffs challenge is directed to those 2007 legislative changes.[4]

ORS 244.025(1)-(4) and ORS 244.042 enact several distinct restrictions concerning gift-giving to public officials. Those restrictions fall into three categories. The first category, set forth in ORS 244.025(1) and (4)(a) and ORS 244.042(1) and (2), restricts the *receipt* of specified gifts or gifts of payment for entertainment expenses.[5] The second category, set forth in ORS 244.025(2), (3), and (4)(b) and (c), restricts the *offering* of specified gifts or gifts of payment for entertainment expenses. The third category, set forth in ORS 244.025(1) and (4)(a), and ORS 244.042(1) and (2), restricts the *solicitation* of specified gifts or gifts of payment for entertainment expenses.[6] We analyze each restriction separately to determine its constitutionality under Article I, section 8.

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[4] During the 2009 legislative session, the legislature enacted Senate Bill (S.B.) 30 (2009), which amended several portions of ORS chapter 244, including ORS 244.020, ORS 244.025, and ORS 244.042. Because those amendments have no bearing on our discussion below, we refer to the 2007 version of the statute throughout this opinion.

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[5] ORS 244.020(5)(a) defines "gift" as:

> "[S]omething of economic value given to a public official or a relative or member of the household of the public official:
>
> "(A) Without valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, which is not extended to others who are not public officials or the relatives or members of the household of public officials on the same terms and conditions; or
>
> "(B) For valuable consideration less than that required from others who are not public officials.
>
> "(b) 'Gift' does not mean:
>
> "(A) Contributions as defined in ORS 260.005.
>
> "(B) Gifts from relatives or members of the household of the public official.
>
> "(C) An unsolicited token or award of appreciation in the form of a plaque, trophy, desk item, wall memento or similar item, with a resale value reasonably expected to be less than $25.
>
> "(D) Informational material, publications or subscriptions related to the recipient's performance of official duties.
>
> "(E) Admission provided to or the cost of food or beverage consumed by a public official, or a member of the household or staff of the public official when accompanying the public official, at a reception, meal or meeting held by an organization before whom the public official appears to speak or to answer questions as part of a scheduled program.

> "(F) Reasonable expenses paid by any unit of the federal government, a state or local government, a Native American tribe that is recognized by federal law or formally acknowledged by a state, a membership organization to which a public body as defined in ORS 174.109 pays membership dues or a not-for-profit corporation that is tax exempt under section 501(c)(3) of the Internal Revenue Code and that receives less than five percent of its funding from for-profit organizations or entities, for attendance at a convention, fact-finding mission or trip, or other meeting if the public official is scheduled to deliver a speech, make a presentation, participate on a panel or represent state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117."

[6] For ease of discussion, we refer in this opinion to the person identified in the statutory phrase "a public official, candidate for public office or a relative or member of the household of the public official or candidate" as a "public official." Additionally, we refer to the persons or entities identified in the statutory phrase "any single source that could reasonably be known to have a legislative or administrative interest in any governmental agency in which the public officials, or the candidate if elected would hold, any official position or over which the public official exercise, or the candidate if elected would exercise, any authority" as a "lobbyist."

I. ARTICLE I, SECTION 8

Article I, section 8, of the Oregon Constitution, provides:

> "No law shall be passed restraining the free expression of opinion, or restricting the right to speak, write, or print freely on any subject whatever; but every person shall be responsible for the abuse of this right."

In *State v. Robertson,* 293 Or. 402, 649 P.2d 569 (1982), this court set out a framework within which to analyze challenges to statutes under Article I, section 8, which the court later summarized in *State v. Plowman,* 314 Or. 157, 164, 838 P.2d 558 (1992), *cert. den.,* 508 U.S. 974, 113 S.Ct. 2967, 125 L.Ed.2d 666 (1993):

> "First, the court recognized a distinction between laws that focus on the *content* of speech or writing and laws that focus on proscribing the pursuit or accomplishment of *forbidden results.* [*Robertson,*] 293 Or. at 416-17, 649 P.2d 569. The court reasoned that a law of the former type, a law 'written in terms directed to the substance of any "opinion" or any "subject" of communication,' violates Article I, section 8,
>
> "'unless the scope of the restraint is wholly confined within some historical exception that was well established when the first

American guarantees of freedom of expression were adopted and that the guarantees then or in 1859 demonstrably were not intended to reach.' *Id.* at 412[, 649 P.2d 569].

"Laws of the latter type, which focus on forbidden results, can be divided further into two categories. The first category focuses on forbidden effects, but expressly prohibits expression used to achieve those effects. The coercion law at issue in *Robertson* was of that category. *Id.* at 417-18, 649 P.2d 569. Such laws are analyzed for overbreadth:

> "'When the proscribed means include speech or writing, however, even a law written to focus on a forbidden effect * * * must be scrutinized to determine whether it appears to reach privileged communication or whether it can be interpreted to avoid such "overbreadth."' *Ibid.*

"The second kind of law also focuses on forbidden effects, but without referring to expression at all. Of that category, this court wrote:

"'If[a] statute [is] directed only against causing the forbidden effects, a person accused of causing such effects by language or gestures would be left to assert (apart from a vagueness claim) that the statute

> could not constitutionally be applied to his particular words or other expression, not that it was drawn and enacted contrary to Article I, Section 8.' Id. at 417[, 649 P.2d 569]."

(Emphases, brackets, and ellipsis in original; omitted.)

Our first task, then, is to determine whether the various statutes under consideration here are "written in terms directed to the substance of any 'opinion' or any 'subject' of communication." *Robertson,* 293 Or. at 412, 649 P.2d 569. As this court observed in *Robertson,* if a law by its terms restrains the free expression of opinion or restricts the right to speak freely on any subject, it violates Article I, section 8.

A. *Gift receipt restrictions*

[1] ORS 244.025(1) provides that a public official "may not * * * receive" a gift or gifts exceeding $50 in value from a lobbyist. ORS 244.025(4)(a) prohibits a public official from receiving from a lobbyist payment of expenses for entertainment in any amount. ORS 244.042(1) and (2) prohibit a public official, a candidate for public office, or a member of the official's or candidate's household from receiving from a lobbyist honoraria with a value in excess of $50. For brevity's sake, we refer to those statutory limitations as restrictions on the receipt of gifts.

Plaintiffs assert that the statutory restrictions on receiving gifts proscribe constitutionally protected expression. They argue that gifts, entertainment, and honoraria expenditures constitute "lobbying" as defined by ORS 171.725(8),[7] in that "lobbying expenditures for meals, entertainment, and honoraria convey a general message of interest and appreciation in discussing legislative or administrative issues." Plaintiffs contend that this court previously has declared that lobbying is political speech protected under Article I, section 8. *See Fidanque v. Oregon Govt. Standards and Practices,* 328 Or. 1, 8, 969 P.2d 376 (1998) (discussing principle). Plaintiffs argue that, in this context, giving gifts constitutes lobbying because the gifts are "clearly designed to attempt to influence legislative action or, at a minimum, to attempt to 'obtain the good will' of a legislative official." Plaintiffs also assert that, because the statutes are directed at gifts made by persons with a "legislative or administrative interest," and because the receipt of gifts is restricted only if there is some political advocacy associated with the expenditure, the statutes are directed at the content of this form of expression. Therefore, plaintiffs argue, the gift receipt restrictions fall under the first category of the *Robertson* framework. We turn to the merits of that claim.[8]

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[7] ORS 171.725(8) provides:

"'Lobbying' means influencing, or attempting to influence, legislative action through oral or written communication with legislative officials, solicitation of executive officials or other persons to influence or attempt to influence legislative action or attempting to obtain the goodwill of legislative officials."

As noted above, the statutory restrictions regulate a particular kind of conduct: the receipt of specified gifts. "Receive" means "to take possession or delivery of (a gift) * * *." *Webster's Third New Int'l Dictionary* 1894 (unabridged ed. 2002). The statutory restrictions are thus confined to the act of a public official, a candidate, or a relative or member of their household, in taking possession or delivery of a gift valued in excess of statutory limits.

The statutory restrictions on the receipt of gifts contain five elements. First, the required time frame: the gift or gifts must be received within one calendar year. Second, the receiving party must fall in one of the four groups: (1) a public official; (2) a candidate for public office; (3) a relative of one of the foregoing persons;[9] or (4) a household member of one of the foregoing persons. Third, the party must receive a gift or gifts, that is, take possession or delivery. Fourth, the gift or gifts must have an aggregate value in excess of statutory limits. Fifth, the gift or gifts (but not honoraria) must come from a source of the kind identified by ORS 244.025(1):

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[8] Although the statutory list of gift recipients does not include plaintiffs, we conclude that plaintiffs are affected by the statutory restrictions within the meaning of ORS 28.020. If the restrictions on the receipt of gifts are enforceable, they will have a practical impact on the manner in which plaintiffs conduct their lobbying business. In that event, the restrictions on gift-giving would compel plaintiffs either to restrict their present goodwill-building activities to gift-giving that meets the statutory monetary limits or to eliminate gift-giving altogether. Because the asserted effects of the receipt of gifts restrictions on plaintiffs' lobbying business are neither hypothetical nor abstract, plaintiffs may seek a declaration concerning the validity of those restrictions.

[9] As already noted, the restrictions in ORS 244.042(1) and (2) concerning honoraria do not apply to "relatives" of public officials or candidates for office.

> "[A]ny single source that could reasonably be known to have a legislative or administrative interest in any governmental agency in which the public official holds, or the candidate if elected would hold, any official position or over which the public official exercises, or the candidate if elected would exercise, any authority."
>
> Honoraria must be received in connection with the official duties of either the public official or the public office for which the receiver is a candidate.

In our view, the receipt of gifts restrictions are not written in terms directed to the substance of any opinion or any subject of communication, as *Robertson* explained that analytical principle. A public official who is subject to restrictions on the receipt of gifts can violate the restrictions without saying a word, without engaging in expressive conduct, and regardless of any opinion that he or she might hold. In *Plowman,* this court considered and rejected a similar free-speech challenge to a hate crime statute, stating:

> "Persons can commit that crime without speaking a word, and holding no opinion other than their perception of the victim's characteristics."

314 Or. at 165, 838 P.2d 558. Because the receipt of gifts restrictions do not focus on the content of speech or writing, or on the expression of any opinion, we have no reason to analyze whether the restrictions fall within a well-established historical exception, *id.* at 163, 838 P.2d 558, or whether they restrain communications that are incompatible with a speaker's official role or responsibility. *See In re Lasswell,* 296 Or. 121, 673 P.2d 855 (1983) (discussing incompatibility exception). Neither do the receipt of gifts restrictions focus on proscribing the pursuit or accomplishment of forbidden results, nor do they prohibit expression used to accomplish those forbidden results.

Plaintiffs, however, relying on *Fidanque,* argue that the receipt of gifts by public officials is so closely bound up with lobbying communications-which they assert are a constitutionally protected form of expression-that any restriction on the receipt of lobbyists' gifts necessarily restrains the practice of lobbying itself. More specifically, plaintiffs argue that this court should recognize gift-giving to legislators as a form of constitutionally protected expression because (1) the act of gift-giving typically is surrounded by communications about legislative business that constitute protected expression; (2) the motive behind gift-giving to legislative officials is the desire to influence governmental decisions, which reflects a key reason why the constitution's framers chose to protect expression in the constitution; and (3) any constitutional protection for political contributions should apply equally to gifts to legislative officials because they are indistinguishable from political contributions. We address each of plaintiffs' arguments, beginning with a discussion of this court's *Fidanque* decision.

In *Fidanque,* two lobbyists challenged the validity of a statute that required all lobbyists to pay a biennial registration fee to the government to engage in lobbying. They contended, among other things, that the registration fee interfered with their free expression rights protected by Article I, section 8. This court recognized in *Fidanque* that lobbying was a profession that was "essentially expressive [in] nature," 328 Or. at 8, 969 P.2d 376, and that lobbying constituted "political speech." *Id.* at 7, 969 P.2d 376. The registration fee examined in *Fidanque* thus was a barrier to political expression by lobbyists. *Id.* at 9, 969 P.2d 376. However, in striking down the registration fee, this court did not express or imply that public officials or others are entitled to take delivery of property or other largess, free of regulation, simply because lobbyists proffer it in connection with a political communication. Nor did *Fidanque* express or imply that those who listen to and interact with lobbyists-public officials and candidates for office, for example-have a constitutional free expression right to receive gifts of property, free of governmental regulation.

Although *Fidanque* properly recognized that lobbying the legislature is "primarily expressive," *id.*

at 7, 969 P.2d 376, that case does not aid plaintiffs here, because it did not examine specific types of lobbying activities to determine whether they involved constitutionally protected expression and, to the extent they involve expression, whether they are subject to legislative regulation.

This court, however, has previously analyzed (1) whether regulated conduct should be categorized as protected expression because other free speech activity surrounds or accompanies the regulated conduct, and (2) whether the actor's motive to express a viewpoint can require the court to treat regulated conduct as protected expression. In *Huffman and Wright Logging Co. v. Wade,* 317 Or. 445, 857 P.2d 101 (1993), the plaintiff, a logging company, brought a tort action for trespass to chattels against six persons who had participated in a demonstration against logging on a forest road. During the demonstration, the defendants, without permission, climbed on, and chained themselves to, several pieces of the plaintiff's logging equipment. While chained, the defendants made statements, sang songs, and chanted slogans to express their views about the environment. Following a jury trial, the trial court entered a judgment for compensatory and punitive damages against the defendants, and the Court of Appeals affirmed the judgment. *Huffman and Wright Logging Co. v. Wade,* 109 Or.App. 37, 81 P.2d 1334 (1991).

On review, the plaintiffs challenged the punitive damages award on free expression grounds. After describing the defendants' trespassory actions, this court stated:

> "Although those acts undoubtedly had a communicative effect, in the sense that most purposive human activity communicates something about the frame of mind of the actor, the acts were conduct, not speech. The question becomes, then, whether defendants are nonetheless constitutionally immune from potential responsibility for punitive damages because of the message that their conduct assertedly was trying to convey, the reason for their conduct, or the fact that speech accompanied their conduct."

317 Or. at 449-50, 857 P.2d 101 (omitted).

The court then turned to an analysis of other Oregon cases examining both criminal and civil laws, including the common law of torts, to determine their rationales for permitting or prohibiting punishment of conduct associated with expression.[10] The court noted that *Plowman* contained two lessons, both of which are pertinent to this case:

> "The first is that a person's reason for engaging in punishable conduct does not transform conduct into expression under

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[10] The court analyzed cases involving both criminal and civil laws together, because "[t]he same analytic construct applies under Article I, section 8, to laws that regulate but do not criminalize speech." Id. at 450 n. 6, 857 P.2d 101.

> Article I, section 8. The second lesson is that speech accompanying punishable conduct does not transform conduct into expression under Article I, section 8."

317 Or. at 452, 857 P.2d 101 (emphasis in original; citations omitted).

In *Huffman,* the court also observed that it had established the analytical line between successful and unsuccessful constitutional challenges to various forms of regulation of conduct by focusing on whether speech was an element of the regulation or the cause of the claimed damage. On the one hand, the court had nullified punitive damages awards in cases in which speech was an element of the tort at issue, *see Wheeler v. Green,* 286 Or. 99, 593 P.2d 777 (1979) (defamation), or the defendant had committed the tort only by speech, *see Hall v. The May Dept. Stores,* 292 Or. 131, 637 P.2d 126 (1981) (claim for intentional infliction of severe emotional distress was based solely on store security officer's statements during employee interrogation). On the other hand, the court had concluded that, in tort cases involving harm caused only in part by speech, "a defendant who requests it is entitled to an instruction limiting the tortious predicate for punitive damages to conduct not protected by the free speech provision of Article I, section 8." 317 Or. at 457, 857 P.2d 101. *See, e.g., Lewis v. Oregon Beauty Supply Co.,* 302 Or. 616, 733 P.2d 430 (1987) (illustrating principle).

The *Huffman* court then turned to an application of those principles to the tort of trespass to chattels involved in that case. The court determined that the jury had been entitled to find that the defendants' trespassory activities, such as chaining themselves to the plaintiff's equipment,

> "caused the disturbance of plaintiff's possession of its personal property, wholly apart from any motivating opinion, underlying message, or accompanying speech. The trespassory acts were, therefore, 'non-expressive conduct' within the meaning of Lewis v. Oregon Beauty Supply Co., supra. The message that defendants sought to convey by their conduct, the reason for their conduct, and the spoken and written words accompanying their conduct did not transform defendants' conduct into speech."

317 Or. at 458, 857 P.2d 101. The judgment for punitive damages was affirmed. *Id.* at 462, 857 P.2d 101.

Applying the analytical model used in *Huffman,* we conclude that the terms of the gift receipt restrictions limit nonexpressive conduct-not expression. As a general matter, the act of delivering property to a public official is nonexpressive conduct. Lobbyists may regularly convey political messages to public officials at or near the occasions of their gift giving. Lobbyists also may intend their gift-giving to communicate political support or goodwill toward the recipients-as this court has observed, "most purposive human activity communicates something about the frame of mind of the actor." *Huffman and*

Wright Logging Co., 317 Or. at 450, 857 P.2d 101. But something more is required to elevate mere purposive human activity into protected expression. To the extent that the gift receipt restrictions interfere with gift-*giving* by lobbyists, they impede only nonexpressive conduct. Moreover, the array of political expressions and communicative intentions that may surround the giving of gifts by lobbyists does not immunize the nonexpressive conduct of gift-giving from legislative regulation.[11]

That brings us to plaintiffs' final argument, *viz.*, that gift-giving by lobbyists to public officials is analogous to the giving of political contributions to candidates and campaigns, and that, consistent with *Vannatta v. Keisling,* 324 Or. 514, 931 P.2d 770 (1997) (*Vannatta I*), this court should declare that the giving of gifts to public officials, like campaign contributions, is constitutionally protected expression under Article I, section 8.

In *Vannatta I,* the plaintiffs challenged various statutory measures, adopted through the initiative process, including a mandatory limit on contributions to state political candidates and campaigns. The plaintiffs argued, among other things, that the contributions limitations violated Article I, section 8, because campaign contributions and expenditures were constitutionally protected expression under Article I, section 8.

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[11] We note that, in challenging the restrictions on receiving gifts, plaintiffs might seek to demonstrate through specific proof that the state is seeking to apply the restrictions to their particular words or expression, but they have not done so here.

In analyzing the plaintiffs' argument, the *Vannatta I* court first accepted a concession by the parties that campaign *expenditures* constitute protected expression. 324 Or. at 520, 931 P.2d 770. However, with regard to campaign *contributions,* the court noted that the United States Supreme Court had held in *Buckley v. Valeo,* 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976), that campaign contributions were a kind of expression that was less central to the core of First Amendment expression and, thus, were subject to governmental restriction, with the constitutionality of any particular restriction being determined based on a balancing of the interests involved. *Vannatta I,* 324 Or. at 521, 931 P.2d 770. The court described two of the reasons on which *Buckley* had relied for that conclusion:

> "(i) although contributions may result in speech, that speech is by the candidate and not by the contributor; and (ii) contributions express only general support for a candidate and do not communicate the reasons for that support."

Id. The court in *Vannatta I* then stated:

> "Neither of those assumptions appears correct to us. In our view, a contribution is protected as an expression by the contributor, not because the contribution eventually may be used by a candidate to express a particular message. The money may never be used to promote a form of

> expression by the candidate; instead, it may (for example) be used to pay campaign staff or to meet other needs not tied to a particular message. However, the contribution, in and of itself, is the contributor's expression of support for the candidate or cause-an act of expression that is completed by the act of giving and that depends in no way on the ultimate use to which the contribution is put."

Id. at 522, 931 P.2d 770 (emphasis in original).

Plaintiffs, relying-not unreasonably, in our view-on the preceding paragraph from *Vannatta I,* assert that *any* donation to a political figure, including a public official, that the donor intends as an expression of support is necessarily a form of expression protected by Article I, section 8. In our view, however, plaintiffs read the foregoing statements out of context. The statements on which plaintiffs rely are best understood if we clarify and explain them in light of the balance of the discussion in *Vannatta I.*

First, the court's assertion in *Vannatta I* that a political contribution is protected expression even if it never promotes any political message was made in connection with the court's disagreement with the two assumptions, noted above, on which the United States Supreme Court had relied for its ruling in *Buckley.* Second, and most important in our view, the court's rationale for the holding in *Vannatta I* that "campaign contributions" are protected speech is based on the assumption by the *Vannatta I* court that campaign contributions are so inextricably intertwined with the candidate or the campaign's expression of its message that the two cannot be separated. In other words, the *Vannatta I* court assumed that restricting campaign contributions restricts a candidate's or a campaign's ability to communicate a political message. It is that assumption that underlies the court's determination that the statutory campaign contribution limitations at issue in *Vannatta I* violated Article I, section 8.

Because that premise-restricting campaign contributions restricts the ability to communicate political messages-is in question here, two other clarifying comments are necessary. First, the court's statement in *Vannatta I* that campaign contributions were constitutionally protected forms of expression regardless of the "ultimate use to which the contribution is put" was unnecessary to the court's holding. On further reflection, we conclude that that observation was too broad and must be withdrawn. Second, because *Vannatta I* assumed a symbiotic relationship between the making of contributions and the candidate's or campaign's ability to communicate a political message, this court did not squarely decide in *Vannatta I* that, in every case, the delivery to a public official, a candidate, or a campaign of money or something of value also is constitutionally protected expression as a matter of law.

The foregoing discussion undermines plaintiffs' reliance on *Vannatta I*. Giving a gift to a public official is not inextricably linked with a public official's ability to carry out official functions. Public officials can speak whether or not lobbyists have given them gifts, which distinguishes this case from *Vannatta I* and its focus on the connection between the restriction on campaign contributions and the candidate's or campaign's ability to communicate a political message. We agree with the state that the restrictions on receiving gifts withstand plaintiffs' constitutional challenge because the lobbying activity on which plaintiffs based their challenge-giving gifts to public officials-is nonexpressive conduct. That determination is consistent with this court's analysis and conclusion in *Huffman and Wright Logging Co.*, and is correct, at least in the absence of facts (which plaintiffs do not offer here) demonstrating that the state's enforcement of the restrictions has the effect of suppressing or restricting expression in a specific case. We conclude, therefore, that the trial court correctly determined that plaintiffs' challenges to the gift receipt restrictions were not well taken, and that the court therefore correctly granted summary judgment in favor of the state.

B. *Restrictions on offering gifts*

[2] ORS 244.025(2) and (3) prohibit a lobbyist from "offer[ing]" to a public official or candidate for public office (or their relatives or household members) any gift or gifts with an aggregate value in excess of $50. ORS 244.025(4)(b) and (c) prohibit a lobbyist from "offer[ing]" to a public official or candidate for public office *any* gift of payment of expenses for

entertainment.[12]

We recognize that the same statutes that restrict plaintiffs' right to communicate an offer of a gift that exceeds the statutory limitations also prohibit the public official from *accepting* the offered gift. As we have discussed earlier, the statutory restrictions on a public official's ability to accept specified gifts from lobbyists are constitutionally valid. In that light, it can be argued that, if the statutory restrictions on the receipt of gifts are constitutionally permissible, there is no need to analyze the statutory restriction on offering a gift: any claimed right to offer a gift to a public official is essentially rendered nugatory, if a public official cannot accept it. However, the restrictions on "receiving" a gift and "offering" a gift apply to different kinds of conduct and they deserve a separate constitutional analysis. In our view, the legal validity of restrictions on "receiving" gifts does not resolve the question whether plaintiffs enjoy a constitutional free expression right to communicate an "offer" of a gift.

Unlike the statutory restriction on the receipt of gifts (including by implication a restriction on the giving of gifts), the restrictions on "offering" gifts, when examined under the *Robertson* methodology, are a type of law that focuses on the content of speaking or writing: *offering* a gift. The restrictions on offering a gift are not aimed at the pursuit or accomplishment of some forbidden results, such as, perhaps, the regulation of conflicts of interest involving government officials. Rather, they focus on every utterance of an offer, of the kind described in the statute, whether or not such an offer produces any invidious effect. *See City of Portland v. Tidyman,* 306 Or. 174, 183-84, 759 P.2d 242 (1988) (city ordinance prohibiting "adult bookstores" was addressed to one disfavored type of communication by words and pictures; ordinance was not written in terms of asserted negative effects of adult bookstores). The trial court correctly determined, insofar as the restrictions on offering gifts are concerned, that those restrictions expressly regulate speech by lobbyists.

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[12] The record below demonstrates that plaintiffs wish to "offer" gifts to public officials, candidates for public office, and their relatives and household members that would exceed the restrictions described above. As a consequence, plaintiffs are "affected" by those restrictions and they may seek declaratory relief from their enforcement under ORS 28.020.

> "[A]rticle I, section 8 prohibits lawmakers from enacting restrictions that focus on the content of speech or writing, either because that content itself is deemed socially undesirable or offensive, or because it is thought to have adverse consequences. * * * It means that laws must focus on proscribing the pursuit or accomplishment of forbidden results rather than on the suppression of speech or writing either as an end in itself or as a means to some other legislative end."

Robertson, 293 Or. at 416-17, 649 P.2d 569. Applying that standard here, we also conclude that the restrictions on "offering" gifts do not focus on the pursuit or accomplishment of forbidden results.

The state next contends that the restrictions on offering gifts qualify as permissible reasonable limitations on the time, place, and manner of expression that leave open ample avenues for engaging in the proscribed expression. We disagree.

In *Tidyman,* this court stated:

> "A regulation is not always unconstitutional because it restricts one's choice of a place or time for self-expression or religious practice, when that is not the object of the regulation."

306 Or. at 182, 759 P.2d 242. *Tidyman* explained several ways in which a city permissibly could limit "all location, time, manner, intensity, or invasive effect of some communicative activity * * * [or impose] limitations of number, frequency, density, or duration" of communication. *Id.* at 183, 759 P.2d 242. The court listed, as examples, the granting of evenhanded exceptions to otherwise valid restrictions on the placement of signs, the flow of traffic during a demonstration, and the use of sound trucks during a campaign. But, as noted, those examples did not assist the city there, because its ordinance was drafted to prohibit one kind of disfavored speech, *i.e.,* adult bookstores.

Outdoor Media Dimensions v. Dept. of Transportation, 340 Or. 275, 132 P.3d 5 (2006), elaborated on the holding in *Tidyman,* explaining that, although content-neutral time, place, and manner restrictions on speech can be sustained, that category of regulations concerns laws that

> "focus on the accomplishment of 'forbidden results,' but do so by restricting expression, [and therefore] such restrictions appear to come within the second of the three *Robertson* categories."

Id. at 288, 132 P.3d 5. As noted, the "second *Robertson* category" refers to laws that prohibit expression used to achieve prohibited effects. The restrictions on the offering of gifts, as noted, do not fall within the second *Robertson* category, because they expressly prohibit disfavored speech without referring at all to prohibited effects that the legislature may proscribe. The restrictions on offering gifts also do not qualify as limitations on the time, place, and manner of speech. The restrictions apply to every offer of a gift that meets the statutory criteria, regardless of when, where, and in what manner it is made.

For the foregoing reasons, we conclude that the statutory restrictions on "offer[ing]" a gift to a public official, candidate for public office, or relative or household member impermissibly restrict the right of free expression protected by Article I, section 8.[13] With respect to that statutory restriction, the trial court erred in granting summary judgment in favor of the state. Instead, the trial court should have entered a declaratory judgment in plaintiffs' favor, with respect to the restriction on "offer[ing]" gifts.

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[13] As a result of our constitutional analysis regarding the statutory restrictions on receiving a gift, we perceive no need or utility in determining whether the restriction on offering a gift falls within a well-established historical exception.

C. *Solicitation restrictions*

[3] ORS 244.025(1) is a restriction on what a public official may do. It prohibits a public official from "solicit[ing]" a gift or gifts in excess of $50 in value from a lobbyist. ORS 244.025(4)(a) further prohibits a public official from soliciting from a lobbyist any gift in any amount for payment of expenses for entertainment. ORS 244.042(1) and (2) prohibit a public official, including a candidate for public office or a member of their household, from soliciting honoraria with a value in excess of $50.[14]
The state concedes that "soliciting" a gift or honorarium from a lobbyist is protected expression. It nonetheless argues, however, that, for other reasons, the statutory restraint on speech

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[14] ORS 244.020(6) provides:

"'Honorarium' means a payment or something of economic value given to a public official in exchange for services upon which custom or propriety prevents the setting of a price. Services include, but are not limited to, speeches or other services rendered in connection with an event."

The statutory restrictions on soliciting or receiving gifts in ORS 244.025(1) and (4)(a) apply to a "relative" of a public official or candidate for public office. However, the statutory restrictions on receiving honoraria in ORS 244.042(1) and (2) do not mention "relatives" and, thus, do not apply to relatives of public officials or candidates for public office, unless the relative also is a public official, candidate for public office, or member of their household.

represented by the solicitation restrictions is a permissible one. In our view, however, we need not consider the state's concession unless we first determine whether plaintiffs are statutorily qualified to seek declaratory relief regarding the solicitation restrictions described above. ORS 28.020 provides that a person "whose rights, status or other legal relations are *affected* by a constitution [or] statute * * * may have determined any question of construction or validity arising under any such * * * constitution [or] statute * * * and obtain a declaration of rights, status or other legal relations thereunder." (Emphasis added.)

In *Gruber v. Lincoln Hospital District*, 285 Or. 3, 7, 588 P.2d 1281 (1979), this court stated that plaintiffs seeking declaratory relief under ORS chapter 28 and ORS 28.020 must show how their

> "'rights, status, or other legal relations are affected' by an instrument or enactment, the construction or validity of which [the plaintiff] seeks to have determined. Standing under this section has been denied when the showing of the required effect has been too speculative or entirely missing."

(Citations omitted.)

Determining whether plaintiffs have standing to seek declaratory relief in this proceeding is a question of legislative intent:

> "When it is ruling on a standing issue, a reviewing court must focus on the wording of the particular statute at issue, because standing is not a matter of common law but is, instead, conferred by the legislature."

Local No. 290 v. Dept. of Environ. Quality, 323 Or. 559, 566, 919 P.2d 1168 (1996) (citations omitted).

Accordingly, to determine whether plaintiffs satisfy the statutory requirements in ORS 28.020, we must examine the factual record to determine how the challenged solicitation restrictions affect plaintiffs' legal interests. Here, plaintiffs assert that they desire to bestow gifts on public officials, candidates for public office, and relatives and members of their households in connection with lobbying activities. However, plaintiffs have made no showing on the record in this case that the solicitation restrictions affect them at all. Plaintiffs are not among the persons to whom the solicitation restrictions apply, *viz.*, a public official, a candidate for public office, or a relative or member of the household of a public official or candidate.[15] Moreover, nothing that plaintiffs allege permits the implication that the solicitation restrictions have had or will have a practical effect on plaintiffs' lobbying and business activities. Plaintiffs do not explain how the statutory restrictions on the ability of public officials to solicit from lobbyists gifts, entertainment expenses, or honoraria creates or imposes any limitation on plaintiffs' ability to communicate freely with public officials, either in plaintiffs' individual capacities or as representatives of their clients.

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[15] We have recognized that the legislature has constitutional authority to confer standing on "any party" in an agency proceeding to seek judicial review of the agency's final order without a further showing of interest. *Marbet v. Portland Gen. Elect.,* 277 Or. 447, 453, 561 P.2d 154 (1977). No such conferral has occurred here. We also have recognized that the legislature may deputize its citizens to challenge governmental action in the public interest, even though the particular plaintiff may have no personal stake in the proceeding. *Kellas v. Dept. of Corrections,* 341 Or. 471, 484, 145 P.3d 139 (2006). In contrast to the statute reviewed in *Kellas,* no statute deputizes the

Based on the foregoing, we conclude that plaintiffs do not qualify under ORS 20.080 as parties "affected" by the solicitation restrictions. They therefore are not entitled to seek declaratory relief from those restrictions. Plaintiffs are not entitled to an adjudication of the constitutionality of the solicitation restrictions in ORS 244.025(1) and (4)(a) and ORS 244.042(1) and (2). The trial court should have dismissed plaintiffs' complaint with respect to that claim.

D. *First Amendment: Classification of speakers*

Plaintiffs also challenge the gift and entertainment restrictions under the First Amendment to the United States Constitution. Their theory is that the gift and entertainment restrictions apply unevenly, and therefore unconstitutionally, because they suppress the federal speech rights of lobbyists (*i.e.*, persons with a legislative or administrative interest)

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entire public, or any smaller group that might include plaintiffs, to challenge the solicitation restrictions at issue here.

but not others.

We have already concluded that the receipt of gift and entertainment restrictions do not abridge the right of free expression under Oregon's constitution because, as a general matter, they regulate nonexpressive conduct, not expression. Plaintiffs fail to demonstrate that the United States Supreme Court would construe and apply the First Amendment to those restrictions, and yet reach a different conclusion under federal law. We are not aware of any pertinent federal authority that would compel a different answer. Because plaintiffs have not established that the receipt of gift and entertainment restrictions deny a First Amendment right, their contentions regarding the alleged discriminatory application of those restrictions to different classifications of persons are unavailing.

II. ARTICLE I, SECTION 26

Finally, plaintiffs assert that the statutory gift, entertainment, and honoraria restrictions violate Article I, section 26, of the Oregon Constitution, which provides:

> "No law shall be passed restraining any of the inhabitants of the State from assembling together in a peaceable manner to consult for their common good; nor from instructing their Representatives; nor from applying to the Legislature for redress of greviances (sic)."

Plaintiffs assert that, "by prohibiting * * * expenditures to inform or persuade legislators regarding legislative matters, the lobbying restrictions impermissibly restrain Oregon inhabitants from 'instructing their Representatives' or 'applying to the Legislature for redress of grievances.' " However, plaintiffs have failed to support their assertions with any case law, or with any analysis of the origins, the historic concerns, or the drafters' political theories that underlie Article I, section 26. *See State v. Montez,* 309 Or. 564, 604, 789 P.2d 1352 (1990) (without extensive briefing on the origins, historic concerns, and political theories underlying federal Guarantee Clause, court would not consider full range of arguments that could be made regarding impact of Guarantee Clause on constitutionality of death penalty statute). In the absence of that kind of extensive and focused analysis in this case, we fail to see how the rights to assemble, to instruct representatives, and to apply to the legislature for redress of grievances, as protected by Article I, section 26, necessarily must include a constitutional right for public officials to receive gifts, entertainment, and honoraria, or for lobbyists to give restricted gifts to public officials. The fact that gifts may be "helpful" in creating goodwill with public officials does not mean that Article I, section 26, protects the delivery of gifts to them.

III. CONCLUSION

We summarize our conclusions as follows. The trial court correctly granted summary judgment to the state on plaintiffs' challenges to the receipt of gifts and payment of expenses for entertainment restrictions under Article I, sections 8 and 26, of the Oregon Constitution and the First Amendment to the United States Constitution. However, the trial court erred in granting summary judgment to the state in respect to plaintiffs' challenges to the restrictions on "offer[ing]" gifts and entertainment under Article I, section 8. The trial court correctly granted summary judgment to the state on plaintiffs' challenges to the solicitation of gifts restrictions, because plaintiffs do not qualify as persons affected by those restrictions under ORS 28.020. Plaintiffs are entitled to a declaratory judgment that the restrictions on offering gifts and entertainment violate plaintiffs' free speech right under Article I, section 8.

The order of the circuit court is affirmed in part and reversed in part, and the case is remanded to the circuit court for further proceedings.

Or.,2009.
Vannatta v. Oregon Government Ethics Com'n
347 Or. 449, 222 P.3d 1077

IN THE SUPREME COURT OF THE STATE OF
OREGON

FRED VANNATTA and CENTER TO PROTECT
FREE SPEECH, INC., an Oregon not-for-profit
corporation, Plaintiffs-Appellants,

v.

OREGON GOVERNMENT ETHICS COMMISSION,
formerly known as the Oregon Government
Standards and Practices Commission; and STATE
OF OREGON, Defendants-Respondents.

ORDER ACCEPTING CERTIFIED APPEAL

Upon consideration by the court.

The Court of Appeals has certified the appeal in A140080. The certified appeal is accepted.

The court will advise the parties of the oral argument date and whether additional briefing is necessary.

____________________ __________________________

DATE CHIEF JUSTICE

C: John DiLorenzo, Jr
Jerome Lidz
Anna Marie Joyce

IN THE SUPREME COURT OF THE STATE OF OREGON

Date: July 13, 2009

To: Jerome Lidz
o/b/o Oregon Government Ethics Commission,
State of Oregon
DOJ Appellate Division
1162 Court St NE
Salem, OR 97301

John DiLorenzo, Jr.
o/b/o Center to Protect Free Speech Inc, Fred Vannatta
Davis Wright Tremaine LLP
1300 SW 5th Ave, Ste 2300
Portland, OR 97201

Anna Marie Joyce
o/b/o Oregon Government Ethics Commission,
State of Oregon
DOJ Appellate Division
1162 Court St NE
Salem, OR 97301

From: Appellate Court Records Section Clerk

Re: Fred Vannatta v. Oregon Government Ethics Commission
S057570

The Order Accepting Certified Appeal was filed on July 13, 2009.

IN THE COURT OF APPEALS OF THE STATE OF OREGON

FRED VANNATTA and CENTER TO PROTECT FREE SPEECH, INC., an Oregon not-for-profit corporation, Plaintiffs-Appellants,

v.

OREGON GOVERNMENT ETHICS COMMISSION, formerly known as the Oregon Government Standards and Practices Commission; and STATE OF OREGON, Defendants-Respondents.

Marion County Circuit Court
07C20464

A140080

ORDER GRANTING JOINT MOTION TO CERTIFY APPEAL TO SUPREME COURT

Pursuant to ORS 19.405, the parties have filed a joint motion for certification of this appeal to the Supreme Court for disposition. Pursuant to Oregon Laws 2009, ch 277, the motion is granted.

DATE	David V. Brewer, Chief Judge

c: John DiLorenzo, Jr
Anna Marie Joyce

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MARION

FRED VANNATTA and CENTER TO PROTECT FREE SPEECH, INC., an Oregon Not-For-Profit Corporation,

Plaintiffs,

vs.

OREGON GOVERNMENT ETHICS COMMISSION, formerly known as the Oregon Government Standards and Practices Commission, and STATE OF OREGON,

Defendants.

ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

On June 12, 2008, this matter came before the court, the Honorable Joseph C. Guimond presiding, on the parties' cross-motions for summary judgment. Plaintiffs were represented by John DiLorenzo, and defendants were represented by David Leith and Michael Casper, Assistant Attorneys General. The court being first fully advised,

NOW, THEREFORE, IS HEREBY ORDERED THAT plaintiffs' motion for summary judgment is denied, and defendants' motion for summary judgment is granted.

DATED this 19th day of September, 2008.

HONORABLE JOSEPH C. GUIMOND
Circuit Court Judge

Submitted by: David E. Leith
Attorney-in-Charge
Special Litigation Unit
Of Attorneys for Defendants

CIRCUIT COURT OF OREGON
THIRD JUDICIAL DISTRICT
MARION COUNTY COURTHOUSE
P.O. BOX 12869
SALEM, OREGON 97309-0869

August 26, 2008

JOSEPH C. GUIMOND, JUDGE
Hearing Room E
(503) 588-5160

John DiLorenzo, Jr.
Attorney at Law
1300 SW Fifth Avenue Suite 2300
Portland Or 97201

David Leith
Assistant Attorney General
1162 Court Street NE
Salem Or 97301-4096

Re: VanNatta v. State of Oregon
Case 07C20464

Dear Mr. DiLorenzo and Mr. Leith:

The above matter came before the court on June 12, 2008 for hearing on the parties' cross-motions for Summary Judgment. At the conclusion of the hearing, I took the matter under advisement. I apologize for the delay in publishing this opinion. I was out of the office for almost 3 weeks in July and there has been a lot of legal research necessary in this case.

In my letter opinion of December 20th, 2007, I made several findings and conclusions of law regarding plaintiff's claims in this case. After reviewing what has been filed in extensive briefing by both parties, it is my decision that I will adhere to those previous rulings. Specifically, that under existing Oregon case law, lobbying expenditures are forms of constitutionally protected expression. However, I also came to the legal conclusion the proposed restrictions placed upon the personal gifts to public officials are constitutionally permissible under the "incompatibility exception". I find no reason to change either of those conclusions and they are expressly adopted for the purpose of the rest of this opinion.

Plaintiffs now contend that the gift restrictions codified in the Oregon Revised Statutes are unconstitutional under Article I, section 8 of the Oregon Constitution and under the First Amendment of the United States Constitution in that those restrictions impermissibly discriminate between different types of speakers. Specifically, Plaintiffs contend that the gift restrictions prohibit expressive activity by persons with an "economic interest" while permitting the same expressive activity by persons that don't have an "economic interest". Plaintiffs additionally argue that the gift restrictions violate Article I, section 20 of the Oregon Constitution as they discriminate against speakers without a rational basis for such discrimination. Finally, Plaintiffs claim that the gift restrictions violate Article I, section 26 of the Oregon Constitution in that they impermissibly restrain Plaintiffs' rights to instruct their representatives and apply to the Legislative Assembly for redress of grievances.

The court will address each argument in turn.

Article I, section 8 of the Oregon Constitution provides, in part, that "no law shall be passed restraining the free expression of opinion, or restricting the right to speak, write, or print freely on any subject whatever[.]"

This court has previously held that the lobbying expenditures restricted by ORS 244.025 and ORS 244.042(1) constitute "expression" for the purposes of Article I, section. 8. Plaintiff is correct is stating that *State v. Robertson*, 293 Or. 402, 649 P.2d 569 (1982), establishes the traditional framework which a court should employ in evaluating Article I, section 8, challenges. *Fidanque v. Oregon Gov't. Standards and Practices*, 328 Or. 1, 5, 969 P.2d 376 (1998). Robertson differentiated between "laws that focus on the content of speech or writing and laws that focus on proscribing the pursuit or accomplishment of forbidden results." *State v. Plowman*, 314 Or. 157, 163, 838 O.2d [*sic*] 558 (1992), cert. den, 508 U.S. 974 (1993). *Robertson* ultimately held that the former laws violate Article I, section 8, unless the prohibition comes within a well-established historical exception. *Id.*

Robertson further divided the latter type of laws: those that focus on forbidden results into two categories: the laws that prohibit expression used to achieve those prohibited effects and those laws that focus on the forbidden effects without referring to expression at all. *Plowman,* 314 Or. at 164 (citing *Robertson,* 293 Or. at 417-418).

In employing the *Robertson* framework, however, the court has consistently stated that there is room for "regulations imposed for reasons other than the substance of [a] particular message." City of *Portland v. Tidyman,* 306 Or. 174, 182, 759 P.2d 242 (1988). In *Tidyman,* the court considered a city ordinance that prohibited adult bookstores in certain locations. The court held the ordinance unconstitutional because it was "flatly directed against one disfavored type of pictorial or verbal communication[.]" *Id.* at 184. The *Tidyman* opinion stated that a "regulation is not always unconstitutional [under Article I, section 8] because it restricts one's choice of a place or time for self-expression* * *." *Id.* at 182. The court stated:

> Even structures and activities unquestionably devoted to constitutionally privileged purposes such as * * * free expression are not immune from regulations imposed for reasons other than the substance of their particular message.

Id.

Similarly, in *City of Hillsboro v. Purcell,* 306 Or. 547, 761 P.2d 510 (1988), the court struck down an overbroad city ordinance that banned door to door solicitation. However, the court pointed out that the city could adopt regulations "that do not foreclose expression entirely but regulate when and how it can occur." *Id.* at 554. The court emphasized that Article I, section 8 did not prohibit "reasonable limitations on door to door solicitations" that "regulated, rather than totally proscribed" the practice. *Id.* at 556. Thus, these cases stand for the proposition that Article I, section 8 does not bar every content-neutral regulation of the time, place and manner of speech.

In this case, Plaintiffs contend that the gift restrictions are *Robertson* "category one" laws in that the restrictions are aimed at the content of the speech, rather than the effects of such speech. Plaintiffs note that the gift restrictions only apply to those with a "legislative interest or administrative interests", which are defined as "an economic interests, distinct from that of the general public, in one or more bills, resolutions, regulations, proposals or other matters subject to the action or vote of a person acting in the capacity of a public official." ORS 244.020(8). In other words, the regulations only apply to certain political speakers: those with an economic interest. Plaintiffs argue that the State may not impose such discriminatory restrictions on protected expression.

However, the court finds that the restrictions are not aimed at the content of the expression. The restrictions apply to all persons who have a legislative or administrative interest, irrespective of the content of the speech. The restrictions are in place to prevent the appearance of impropriety. As the court stated in its previous opinion, "[a]llowing unlimited gifts to public officials and candidates can create the opportunity for and appearance of impropriety and corruption." Thus, the restrictions are focused on the effect, rather than the content of the speech.

Therefore, the court finds that the restrictions are not "category one" laws under the *Robertson* analysis. Thus, content neutral regulations can be imposed for reasons of public safety, aesthetics, or other important public purposes. *Outdoor Media Dimensions, Inc. v. Dept. of Transportation*, 340 Or. 275, 288, 132 P.3d 5, 12 (2006). As the court stated in *Purcell, supra*, "reasonable limitations" can be imposed to regulate, rather than "totally proscribe[]" the practice. *Purcell*, 306 Or. at 556. Here, the gift restrictions do no totally proscribe all gift giving by those with a legislative or administrative intent. Gifts with an aggregate value of $50.00 per year are permissible. Thus, the restrictions place reasonable limitations on gifts, rather than completely prohibit gifts.

Because the restrictions regulate gift giving in a content neutral manner, they do not unconstitutionally infringe expression under Article 1, section 8.

Moreover, Plaintiffs' First Amendment challenge fails. In *Service Employees International v. Fair Political Practices Commission*, 955 F.2d 1312 (9th Cir. 1992), the court stated that "the government must remain scrupulously neutral when regulating expressive activities protected by the First Amendment." *Id.* at 1319. The court continued, stating that there is a "line of [United States] Supreme Court case * *[which] firmly establishes the principle that discrimination is permissible in the First Amendment context only when the discrimination is itself necessary to achieve a substantial governmental interest." *Id.* The crucial question is "whether there is an appropriate governmental interest suitably furthered by the differential treatment." *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 92 S. Ct. 2286 (1972).

The gift restrictions advance the State's interest in safeguarding the public confidence in the State's electoral and other public processes. *See Crawford v. Marion Co. Election Bd.*, 128 S. Ct. 1610, 1620 (2008). *See also Buckley v. Valeo*, 424 U.S. 1 (1976). The Supreme Court has held that fighting perceptions of political corruption stemming from political contributions is a legitimate and substantial state interest. *Crawford*, 128 S. Ct. at 1642. Accordingly, the restrictions do not violate Plaintiffs' rights under the First Amendment.

Plaintiffs also argue that the gift restrictions violate the Privileges and Immunities clause — Article I, section 20 of the Oregon Constitution. That provision guarantees that all citizens receive legal privileges and immunities equally. Under that provision, a court must determine whether the challenged statute bases its distinctions on immutable personal characteristics such as race, gender and age. *See Crocker & Crocker*, 332 Or. 42, 22 P.3d 759 (2001). If the distinctions are not based on these characteristics, the "court reviews the classifications for whether the legislature had a rational basis for making the distinction." *Id.* at 55.

In this case, Plaintiffs do not claim that the gift restrictions are based on immutable characteristics. Therefore, the distinctions need only have a rational basis. As stated above, the gift restrictions are in place to prevent the appearance of corruption in political processes. Because there is a rational basis for imposing such gift restrictions, they do not violate Article I, section 20.

Finally, the Plaintiffs assert that the gift restrictions violate Article I, section 26 of the Oregon Constitution. That provision states:

> No law shall be passed restraining any of the inhabitants of the State from assembling together in a peaceable manner to consult for the common good, nor from instructing their Representatives, nor from applying to the Legislature for redress of greviances [sic].

Plaintiffs contend that the political expression involved constitutes "instructing" legislatures or "applying to the Legislature for redress of grievances." Therefore, the gift restrictions violate Plaintiffs' rights under Article 1, section 26.

However, nowhere in the text of Article I, section 26 does it specifically provide for any right to give to candidates, public officials, or their families gifts, entertainment, or honoraria, or to receive gifts, entertainment or honoraria. The gift restrictions do not prohibit or limit Plaintiffs' right to assemble, access their representatives, or address the Legislature. Therefore, the restrictions do no violate Article I, section 26.

In summary, the court finds that the gift restrictions do not violate Article I, section 8, section 20, or section 26 of the Oregon Constitution. Further, the restrictions do not violate the First Amendment of the United State Constitution. Accordingly, Plaintiffs' Motion for Summary Judgment is denied and Defendant's Motion for Summary Judgment is granted. Mr. Leith may prepare an order and Judgment consistent with this opinion.

Very Truly Yours,

Joseph C. Guimond
Circuit Court Judge

JCG:js

CIRCUIT COURT OF OREGON
THIRD JUDICIAL DISTRICT
MARION COUNTY COURTHOUSE
P.O. BOX 12869
SALEM, OREGON 97309-0869

JOSEPH C. GUIMOND, JUDGE
Hearing Room E
(503) 588-5160

December 20, 2007

Charles E. Fletcher
Assistant Attorney General
1162 Court Street NE
Salem Or 97301-4096

John DiLorenzo, Jr.
Attorney at Law
1300 SW Fifth Avenue Suite 2300
Portland Or 97201

Re: VanNatta v. Oregon Governments
Ethics Commission and State of Oregon
Case 07C20464

Dear Mr. Fletcher and Mr. DiLorenzo:

The above matter came before the court on November 26th, 2007 for oral argument on plaintiff's Motion for a Preliminary Injunction and defendant's Motion for Summary Judgment. At the conclusion of oral argument, I took the matter under advisement. I have now been able to review the legal memorandums filed, the relevant case law and my notes from the court proceedings.

Plaintiffs are seeking a preliminary injunction enjoining defendants from enforcing Section 18 (1), (2), (3) and (4), and Section 24 (1) and (2) of 2007 Senate Bill 10. (Hereafter referred to as SB 10). The defendants seek to enforce the provisions of SB 10 which places restrictions upon gifts to elected officials. At issue is whether the gifts by lobbyists to political officials are protected forms of expression under Article I, Section 8 of the Oregon Constitution, and, if so, do they survive further scrutiny?

During the 2007 session , the Oregon Legislature passed Senate Bill 10, which (among other things): a) prohibits a person with a legislative or administrative interest from giving gifts with an aggregate value of more than $50.00 per year to a public official or candidate for public office;
b) prohibits a person with a legislative or administrative interest from giving gifts of entertainment to a public official or candidate for public office; and c) prohibits a person from providing honorarium to a public official or candidate for public office in connection with the official duties of the public office.

Plaintiffs[1] bring this action to obtain a preliminary injunction declaring that Senate Bill 10 (SB 10) violates Article I, section 8 (and other provisions) of the Oregon Constitution. Plaintiffs claim that lobbying, which includes the act of obtaining good will of a public official, is free speech that the Legislative Assembly may not restrict. The restrictions in SB 10 are therefore, unconstitutional.

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[1] The Plaintiffs are Fred Vanatta [*sic*] and Center to Protect Free Speech (CTPFS). Vanatta [*sic*], an Oregon resident, is the president of CTPFS. He is registered to lobby on behalf of CTPFS.

In response, Defendant filed its Motion for Summary Judgment, arguing that the offering of gifts to public officials and candidates — as opposed to the offering and giving of campaign contributions — has never been a form of protected expression under Oregon law. Defendant points out the term "gift" has always been excluded from campaign contributions. Defendant claims that Article I, section 8, should not be expanded so as to protect public confidence in government.

ORCP 79A provides the standards for issuance of preliminary injunctions by Oregon courts. Because of the lack of Oregon case law construing ORCP 79A, Oregon courts have looked to the analogous federal standards. Under generally recognized principles, a moving party must show a likelihood of success on the merits, that irreparable harm will be suffered in the absence of preliminary relief, and that the "balancing of hardships" favor such relief. *See e.g. Mentor Graphics Corp. v. Quickturn Design Sys.*, 150 F.3d 1374, 1377 (9th Cir. 1998).

The initial issue before the court is whether gifts to political officials are protected forms of expression under Article I, section 8 of the Oregon Constitution. Article I, section 8 provides:

> No law shall be passed restraining the free expression of opinion, or restricting the

> right to speak, write or print freely on any subject whatever, but every person shall be responsible for the abuse of this right.

The court begins with the proposition that statutes are presumed to be constitutional. *See Molodyh v. Truck Insurance Exchange*, 304 Or. 290, 299, 744 P.2d 992 (1987); *State ex rel. Juvenile Dept. v. Orozco*, 129 Or. App. 148, 878 P.2d 432 (1994) (en banc); rev. denied, 326 Or. 58 (1997).

Oregon courts have held that the act of lobbying is protected expression under Article I, section 8. *Fidanque v. State ex rel, Oregon Gov't Standards and Practice Commission*, 328 Or. 1, 969 P.2d 376 (1998). The *Fidanque* court stated, "[l]obbying is political speech, and being a lobbyist is the act of being a communicator to the legislature on political subjects." Id. at 7. Moreover, Oregon has held that political contributions are protected political expression and such contributions may not be limited. *VanNatta v. Keisling*, 324 Or. 514, 931 P.2d 770 (1997) (*VanNatta I*). The *VanNatta* court found that a "contribution, in and of itself, is *the contributor's expression of support for the candidate or cause* — an act of expression that is completed by the act of giving and that depends in no way on the ultimate use to which the contribution is put." *Id.* at 522. The court ultimately found that "many -- probably most" contributions are a form of expression under Article I, section 8. The Plaintiff would ask this court to extend the *VanNatta* holding to cover not only political contributions, but also the giving of gifts without restriction.

While the *VanNatta I* court found that political contributions were protected expression and that such contributions could not be limited, the court provided limiting language concerning contributions, gifts, and bribery. The court states that probably most contributions were a form of expression under Article I, section 8. However, in footnote 10 following this statement, the court stated:

> We qualify our statement with the limiting word, "many," because there doubtless are ways of supplying things of value to political campaigns or candidates that would have no expressive content or that would be in a form or from a source that the legislature otherwise would be entitled to regulate or prevent. To give but a few examples: A bribe may be an expression of support (with an anticipated *quid pro quo*), but it is not a protected expression; a gift of money to a candidate from a corporation or union treasury may be expression, but if it is made in violation of neutral laws regulating the fiscal operation of corporations or unions, it is not protected; a donation of something of value to a friend who later, and unexpectedly, uses that thing of value to support the friend's political campaign is not expression.

The court finds that this footnote offers insight in the analysis as to whether the giving of gifts are a protected expression under Article I, section 8. From a reading of this footnote, "things of value", such as gifts, that "have no expressive content" cannot be "expressions" for the purposes of Article I, section 8. Further, if there is an anticipated *quid pro quo*, then the gift is a bribe and is not a protected expression.

Plaintiff asserts that gifts all fall within the same category as campaign contributions.[2] However, the term "gift" has been excluded from the definition of campaign contributions? Moreover, campaign contributions may only be used to further their expressive content and may not be used for personal gain. *See* ORS 260.407(2). Gifts may not have expressive content and may certainly be used for personal gain. Thus, there is a line between what constitutes campaign contributions and what constitutes a gift.

That is not to say that *all* gifts do not have expressive content. In fact, SB 10 appears to regulate gifts that would have an expressive content — SB 10 only regulates gifts *from a person with a legislative or administrative intent*. SB 10 does not regulate gifts from those persons who do not have a legislative or administrative intent. Thus, from a reading of footnote 10, there are several categories of gifts: a group of gifts that have no expressive content, and therefore, are not an expression for the purposes of Article I, section 8; a group of gifts that are given with an anticipated *quid pro quo*, and therefore, a bribe, which is not protected expression;

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[2] See former ORS 244.020(7)(a). SB 10 also excludes campaign contributions from the definition of "gift". See SB 10, Or. Laws 2007 ch. 877, section 16a.

and also a group of gifts that do have expressive content, and therefore, are protected expressions. Seemingly, SB 10 regulates gifts that do have an expressive content in that SB 10 only regulates gifts from a person with a certain political or administrative agenda. Accordingly, the court finds that the gifts at issue in this particular case are indeed expressions for the purposes of Article 10, section 8.

However, expression may still be subject to regulation if the expression is incompatible with the public official's official duties, known as the incompatibility exception. *See In re Schenk*, 318 Or. 402, 870 P.2d 185 (1994); *In re Fadeley*, 301 Or. 548, 802 P.2d 31 (1990); *In re Lasswell*, 296 Or. 121, 673 P.2d 855 (1983).

In *Fadeley*, a candidate for election to the Oregon Supreme Court was charged with violation of judicial ethics because he personally solicited campaign contributions. The court stated:

> The stake of the public in a judiciary that is both honest in fact and honest in appearance is profound. A democratic society that, like ours, leaves many of its final decision, both constitutional and otherwise, to its judiciary is totally dependant on the scrupulous integrity of that judiciary. A judge's direct request for campaign contributions offers a quid pro quo, or at least, can be perceived by the public to do so. Insulating the judge from such direct solicitation eliminates the

> appearance (at least) of impropriety and to that extent, preserves the judiciary's reputation of integrity.

One of the purposes of SB 10 is to maintain the appearance of propriety among public officials. The public has an expectation that decisions made by public officials and candidates be made honestly, objectively, and without favor. Allowing unlimited gifts to public officials and candidates can create the opportunity for and appearance of impropriety and corruption. SB 10 applies to those who have a legislative or administrative intent. Thus, unlike *VanNatta I* and limitations on campaign contributions, SB 10 applies only where the risk of the appearance of impropriety is at its greatest.

SB 10 does not prohibit all gifts given by those with a legislative or administrative intent. Gifts with an aggregate value of $50.00 per year are permissible. Plaintiff contends that there should be no limitations on gift giving. Plaintiff states that, as with the contribution limits in *VanNatta I,* the notion that gifts to elected officials will lead to corruption, bribery or other impropriety is unsubstantiated by law. This argument is supported by *VanNatta I* — "an underlying assumption of the American electoral system always has been that, in spite of the temptations that contributions may create from time to time, those who are elected will put aside personal advantage and vote honestly and in the public interest. The political history of the nation has vindicated that assumption time and again." *VanNatta I,* 324 Or. at 541. However, the issue is not whether gifts to public officials or candidates actually leads to corruption, bribery or other impropriety. The issue is whether such gift giving *creates the appearance* of bribery, corruption and impropriety. The court finds that unlimited gift giving would create such an appearance and therefore, the incompatibility exception applies.

The court finds that the gifts at issue in this case are forms of protected expression. However, the court further finds that such expression may be regulated because the giving of unlimited gifts to public officials and candidates is incompatible with their official duties. Therefore, SB 10 properly regulates such gift giving to public officials and I find it to be lawfully enacted by the legislature. Accordingly, plaintiff's Motion for Preliminary Injunction is denied. Defendant's Motion for Summary judgment is allowed. Mr. Fletcher may prepare an Order and Judgment consistent with this opinion.

Very Truly Yours,

Joseph C. Guimond
Circuit Court Judge

JCG:js

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MARION

Case No. 07C-20464

FRED VANNATTA and CENTER TO PROTECT FREE SPEECH, INC., an Oregon Not-For-Profit Corporation,
Plaintiffs,

vs.

OREGON GOVERNMENT ETHICS COMMISSION, formerly known as the Oregon Government Standards and Practices Commission, and STATE OF OREGON,
Defendants.

GENERAL JUDGMENT

The court having issued its August 26, 2008 letter opinion on the parties' cross-motions for summary judgment, in which the court denied plaintiffs' motion for summary judgment and granted the State defendants' motion for summary judgment, and the court hereby incorporating that letter opinion in this judgment,

NOW, THEREFORE, IT IS HEREBY ADJUDGED as follows:

(1) The court declares that §§ 18(1), (2), (3), and (4) and 24(1) and (2) of SB 10 (2007)—now codified at ORS 244.025 and 244.042—as well as the definition of a "gift" under 244.020(5) (as amended by SB 10) and the definition of a "legislative or administrative interest" under ORS 244.020(8), are valid and enforceable, contrary to plaintiffs' allegations and arguments;

(2) plaintiffs' complaint is dismissed with prejudice, plaintiffs taking nothing thereby; and

(3) defendants may recover their costs and disbursements incurred herein.

MONEY AWARD

Judgment Creditor:
Oregon Government Ethics Commission
The State of Oregon
c/o Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
(503) 947-4700

Judgment Creditor's Attorney:
David E. Leith
Attorney-in-Charge
Special Litigation Unit
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1162 Court Street NE
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(503) 947-4700

Judgment Debtor:
Fred VanNatta
Center to Protect Free Speech, Inc.
c/o John DiLorenzo, Jr.

Gregory A. Chaimov
Davis Wright Tremaine LLP
1300 SW Fifth Avenue,
Suite 2300
Portland, Oregon 97201

Debtor's Attorney: John DiLorenzo, Jr.
Gregory A. Chaimov
Davis Wright Tremaine LLP
1300 SW Fifth Avenue,
Suite 2300
Portland, Oregon 97201

Debtor's DOB: N/A

Debtor's Social Security No.: Not available for disclosure.

Debtor's Driver's License No.: N/A

Judgment Amount: $248.00

Prejudgment Interest: None

Postjudgment Interest: Nine percent (9%) per annum simple interest on judgment amount of $248.00 from the date judgment is entered until fully paid.

DATED this 19th day of September, 2008.

JOSEPH C. GUIMOND
Circuit Court Judge

Submitted by: David E. Leith
Attorney-in-Charge
Special Litigation Unit
Of Attorneys for Defendants

WEST'S OREGON REVISED STATUTES ANNOTATED TITLE 16. CRIMES AND PUNISHMENTS CHAPTER 162. OFFENSES AGAINST THE STATE AND PUBLIC JUSTICE DEFINITIONS

→162.005. Definitions

As used in ORS 162.005 to 162.425 , unless the context requires otherwise:

(1) "Pecuniary benefit" means gain or advantage to the beneficiary or to a third person pursuant to the desire or consent of the beneficiary, in the form of money, property, commercial interests or economic gain, but does not include a political campaign contribution reported in accordance with ORS chapter 260.

(2) "Public servant" means:

(a) A public official as defined in ORS 244.020;

(b) A person serving as an advisor, consultant or assistant at the request or direction of the state, any political subdivision thereof or of any governmental instrumentality within the state;

(c) A person nominated, elected or appointed to become a public servant, although not yet occupying the position; and

(d) Jurors.

WEST'S OREGON REVISED STATUTES
ANNOTATED
TITLE 16. CRIMES AND PUNISHMENTS
CHAPTER 162. OFFENSES AGAINST THE STATE
AND PUBLIC JUSTICE
BRIBERY

→162.015. Bribe giving

(1) A person commits the crime of bribe giving if the person offers, confers or agrees to confer any pecuniary benefit upon a public servant with the intent to influence the public servant's vote, opinion, judgment, action, decision or exercise of discretion in an official capacity.

(2) Bribe giving is a Class B felony.

WEST'S OREGON REVISED STATUTES ANNOTATED TITLE 16. CRIMES AND PUNISHMENTS CHAPTER 162. OFFENSES AGAINST THE STATE AND PUBLIC JUSTICE BRIBERY

→162.025. Bribe receiving

(1) A public servant commits the crime of bribe receiving if the public servant:

(a) Solicits any pecuniary benefit with the intent that the vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced; or

(b) Accepts or agrees to accept any pecuniary benefit upon an agreement or understanding that the vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced.

(2) Bribe receiving is a Class B felony.

WEST'S OREGON REVISED STATUTES ANNOTATED TITLE 17. STATE LEGISLATIVE DEPARTMENT AND LAWS CHAPTER 171. STATE LEGISLATURE LOBBYING REGULATION

→171.725. Definitions

As used in ORS **171.725** to 171.785, unless the context requires otherwise:

(1) "Compensation" has the meaning given that term in ORS 292.951.

(2) "Consideration" includes a gift, payment, distribution, loan, advance or deposit of money or anything of value, and includes a contract, promise or agreement, whether or not legally enforceable.

(3) "Executive agency" means a commission, board, agency or other body in the executive branch of state government that is not part of the legislative or judicial branch.

(4) "Executive official" means any member or member-elect of an executive agency and any member of the staff or an employee of an executive agency. A member of a state board or commission, other than a member who is employed in full-time public service, is not an executive official for purposes of ORS **171.725** to 171.785.

(5) "Judge" means an active judge serving on the Oregon Supreme Court, Court of Appeals, Oregon Tax Court, or an Oregon circuit court.

(6) "Legislative action" means introduction, sponsorship, testimony, debate, voting or any other official action on any measure, resolution, amendment, nomination, appointment, or report, or any matter that may be the subject of action by either house of the Legislative Assembly, or any committee of the Legislative Assembly, or the approval or veto thereof by the Governor.

(7) "Legislative official" means any member or member-elect of the Legislative Assembly, any member of an agency, board or committee that is part of the legislative branch, and any staff person, assistant or employee thereof.

(8) "Lobbying" means influencing, or attempting to influence, legislative action through oral or written communication with legislative officials, solicitation of executive officials or other persons to influence or attempt to influence legislative action or attempting to obtain the goodwill of legislative officials.

(9) "Lobbyist" means:

(a) Any individual who agrees to provide personal services for money or any other consideration for the purpose of lobbying.

(b) Any person not otherwise subject to paragraph (a) of this subsection who provides personal services as a representative of a corporation, association, organization or other group, for the purpose of lobbying.

(c) Any public official who lobbies.

(10) "Public agency" means a commission, board, agency or other governmental body.

(11) "Public official" means any member or member-elect of any public agency and any member of the staff or an employee of the public agency.

WEST'S OREGON REVISED STATUTES ANNOTATED TITLE 17. STATE LEGISLATIVE DEPARTMENT AND LAWS CHAPTER 171. STATE LEGISLATURE LOBBYING REGULATION

171.735. Application to certain persons

ORS 171.740 and 171.745 do not apply to the following persons:

(1) News media, or their employees or agents, that in the ordinary course of business directly or indirectly urge legislative action but that engage in no other activities in connection with the legislative action.

(2) Any legislative official acting in an official capacity.

(3) Any individual who does not receive compensation or reimbursement of expenses for lobbying, who limits lobbying activities solely to formal appearances to give testimony before public sessions of committees of the Legislative Assembly, or public hearings of state agencies, and who, when testifying, registers an appearance in the records of the committees or agencies.

(4) A person who does not spend more than an aggregate amount of 24 hours during any calendar quarter lobbying and who does not spend an aggregate amount in excess of $100 lobbying during any calendar quarter.

(5) The Governor, chief of staff for the Governor,

deputy chief of staff for the Governor, legal counsel to the Governor, deputy legal counsel to the Governor, Secretary of State, Deputy Secretary of State appointed pursuant to ORS 177.040, State Treasurer, Chief Deputy State Treasurer appointed pursuant to ORS 178.060, chief of staff for the office of the State Treasurer, Attorney General, Deputy Attorney General appointed pursuant to ORS 180.130, Superintendent of Public Instruction, Commissioner of the Bureau of Labor and Industries, members and staff of the Oregon Law Commission who conduct the law revision program of the commission or any judge.

WEST'S OREGON REVISED STATUTES ANNOTATED TITLE 17. STATE LEGISLATIVE DEPARTMENT AND LAWS CHAPTER 171. STATE LEGISLATURE LOBBYING REGULATION

→171.745. Expense statements; contents of statement; time of filing

(1) A lobbyist registered with the Oregon Government Ethics Commission or required to register with the commission shall, according to the schedule described in ORS 171.752, file with the commission a statement showing for the applicable reporting period:

(a) The total amount of all moneys expended for food, refreshments and entertainment by the lobbyist for the purpose of lobbying.

(b) The name of any legislative or executive official to whom or for whose benefit, on any one occasion, an expenditure is made for the purposes of lobbying, and the date, name of payee, purpose and amount of that expenditure. This paragraph applies if the total amount expended on the occasion by one or more persons exceeds $50.

(2) Statements required by this section need not include amounts expended by the lobbyist for personal living and travel expenses and office overhead, including salaries and wages paid for staff and secretarial assistance, and maintenance expenses. If the amount of any expenditure required to be included in a statement is not accurately

known at the time the statement is required to be filed, an estimate of the expenditure shall be submitted in the statement and designated as an estimate. The exact amount expended for which a previous estimate was made shall be submitted in a subsequent report when the information is available.

(3) A statement required by this section shall include a copy of any notice provided to a public official under ORS 244.100 (2).

(4) For each statement required by this section, an entity comprised of more than one lobbyist may file one statement that reports expenditures by the entity and not by individual lobbyists.

WEST'S OREGON REVISED STATUTES ANNOTATED TITLE 22. PUBLIC OFFICERS AND EMPLOYEES CHAPTER 244. GOVERNMENT ETHICS IN GENERAL

→244.020. Definitions

As used in this chapter, unless the context requires otherwise:

(1) "Actual conflict of interest" means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or the person's relative or any business with which the person or a relative of the person is associated unless the pecuniary benefit or detriment arises out of circumstances described in subsection (11) of this section.

(2) "Business" means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual and any other legal entity operated for economic gain but excluding any income-producing not-for-profit corporation that is tax exempt under section 501(c) of the Internal Revenue Code with which a public official or a relative of the public official is associated only as a member or board director or in a nonremunerative capacity.

(3) "Business with which the person is associated" means:

(a) Any private business or closely held corporation of which the person or the person's relative is a director, officer, owner or employee, or agent or any private business or closely held corporation in which the person or the person's relative owns or has owned stock, another form of equity interest, stock options or debt instruments worth $1,000 or more at any point in the preceding calendar year;

(b) Any publicly held corporation in which the person or the person's relative owns or has owned $100,000 or more in stock or another form of equity interest, stock options or debt instruments at any point in the preceding calendar year;

(c) Any publicly held corporation of which the person or the person's relative is a director or officer; or

(d) For public officials required to file a statement of economic interest under ORS 244.050, any business listed as a source of income as required under ORS 244.060 (3).

(4) "Development commission" means any entity which has the authority to purchase, develop, improve or lease land or the authority to operate or direct the use of land. This authority must be more than ministerial.

(5)(a) "Gift" means something of economic value given to a public official or a relative or member of the household of the public official:

(A) Without valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, which is not extended to others who are not public officials or the relatives or members of the household of public officials on the same terms and conditions; or

(B) For valuable consideration less than that required from others who are not public officials.

(b) "Gift" does not mean:

(A) Contributions as defined in ORS 260.005.

(B) Gifts from relatives or members of the household of the public official.

(C) An unsolicited token or award of appreciation in the form of a plaque, trophy, desk item, wall memento or similar item, with a resale value reasonably expected to be less than $25.

(D) Informational material, publications or subscriptions related to the recipient's performance of official duties.

(E) Admission provided to or the cost of food or beverage consumed by a public official, or a member of the household or staff of the public official when accompanying the public official, at a reception, meal or meeting held by an organization before whom the public official appears to speak or to answer questions as part of a scheduled program.

(F) Reasonable expenses paid by any unit of the federal government, a state or local government, a Native American tribe that is recognized by federal law or formally acknowledged by a state, a membership organization to which a public body as defined in ORS 174.109 pays membership dues or a not-for-profit corporation that is tax exempt under section 501(c)(3) of the Internal Revenue Code and that receives less than five percent of its funding from for-profit organizations or entities, for attendance at a convention, fact-finding mission or trip, or other meeting if the public official is scheduled to deliver a speech, make a presentation, participate on a panel or represent state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117.

(G) Contributions made to a legal expense trust fund established under ORS 244.209 for the benefit of the public official.

(H) Reasonable food, travel or lodging expenses provided to a public official, a relative of the public official accompanying the public official, a member of the household of the public official accompanying the public official or a staff member of the public official accompanying the public official, when the public official is representing state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117:

(i) On an officially sanctioned trade-promotion or fact-finding mission; or

(ii) In officially designated negotiations, or economic development activities, where receipt of the expenses is approved in advance.

(I) Food or beverage consumed by a public official acting in an official capacity:

(i) In association with the review, approval, execution of documents or closing of a borrowing, investment or other financial transaction, including any business agreement between state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117 and a private entity or public body as defined in ORS 174.109;

(ii) While engaged in due diligence research or presentations by the office of the State Treasurer related to an existing or proposed investment or borrowing; or

(iii) While engaged in a meeting of an advisory, governance or policy-making body of a corporation, partnership or other entity in which the office of the State Treasurer has invested moneys.

(J) Waiver or discount of registration expenses or materials provided to a public official at a continuing education event that the public official may attend to satisfy a professional licensing requirement.

(K) Expenses provided by one public official to another public official for travel inside this state to or from an event that bears a relationship to the receiving public official's office and at which the official participates in an official capacity.

(L) Food or beverage consumed by a public official at a reception where the food or beverage is provided as an incidental part of the reception and no cost is placed on the food or beverage.

(M) Entertainment provided to a public official or a relative or member of the household of the public official that is incidental to the main purpose of another event.

(N) Entertainment provided to a public official or a relative or member of the household of the public official where the public official is acting in an official capacity while representing state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117 for a ceremonial purpose.

(6) "Honorarium" means a payment or something of economic value given to a public official in exchange for services upon which custom or propriety prevents the setting of a price. Services include, but are not

limited to, speeches or other services rendered in connection with an event.

(7) "Income" means income of any nature derived from any source, including, but not limited to, any salary, wage, advance, payment, dividend, interest, rent, honorarium, return of capital, forgiveness of indebtedness, or anything of economic value.

(8) "Legislative or administrative interest" means an economic interest, distinct from that of the general public, in one or more bills, resolutions, regulations, proposals or other matters subject to the action or vote of a person acting in the capacity of a public official.

(9) "Member of the household" means any person who resides with the public official.

(10) "Planning commission" means a county planning commission created under ORS chapter 215 or a city planning commission created under ORS chapter 227.

(11) "Potential conflict of interest" means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private pecuniary benefit or detriment of the person or the person's relative, or a business with which the person or the person's relative is associated, unless the pecuniary benefit or detriment arises out of the following:

(a) An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.

(b) Any action in the person's official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person's relative or business with which the person or the person's relative is associated, is a member or is engaged.

(c) Membership in or membership on the board of directors of a nonprofit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code.

(12) "Public office" has the meaning given that term in ORS 260.005.

(13) "Public official" means any person who, when an alleged violation of this chapter occurs, is serving the State of Oregon or any of its political subdivisions or any other public body as defined in ORS 174.109 as an elected official, appointed official, employee, agent or otherwise, irrespective of whether the person is compensated for the services.

(14) "Relative" means:

(a) The spouse of the public official;

(b) The domestic partner of the public official;

(c) Any children of the public official or of the public official's spouse;

(d) Siblings, spouses of siblings or parents of the public official or of the public official's spouse;

(e) Any individual for whom the public official has a legal support obligation; or

(f) Any individual for whom the public official provides benefits arising from the public official's public employment or from whom the public official receives benefits arising from that individual's employment.

(15) "Statement of economic interest" means a statement as described by ORS 244.060, 244.070 or 244.100.

(16) "Zoning commission" means an entity to which is delegated at least some of the discretionary authority of a planning commission or governing body relating to zoning and land use matters.

WEST'S OREGON REVISED STATUTES ANNOTATED TITLE 22. PUBLIC OFFICERS AND EMPLOYEES CHAPTER 244. GOVERNMENT ETHICS IN GENERAL

→244.025. Gift limits

(1) During a calendar year, a public official, a candidate for public office or a relative or member of the household of the public official or candidate may not solicit or receive, directly or indirectly, any gift or gifts with an aggregate value in excess of $50 from any single source that could reasonably be known to have a legislative or administrative interest in any governmental agency in which the public official holds, or the candidate if elected would hold, any official position or over which the public official exercises, or the candidate if elected would exercise, any authority.

(2) During a calendar year, a person who has a legislative or administrative interest in any governmental agency in which a public official holds any official position or over which the public official exercises any authority may not offer to the public official or a relative or member of the household of the public official any gift or gifts with an aggregate value in excess of $50.

(3) During a calendar year, a person who has a legislative or administrative interest in any governmental agency in which a candidate for public office if elected would hold any official position or over which the candidate if elected would exercise

any authority may not offer to the candidate or a relative or member of the household of the candidate any gift or gifts with an aggregate value in excess of $50.

(4) Notwithstanding subsection (1) of this section:

(a) A public official, a candidate for public office or a relative or member of the household of the public official or candidate may not solicit or receive, directly or indirectly, any gift of payment of expenses for entertainment from any single source that could reasonably be known to have a legislative or administrative interest in any governmental agency in which the public official holds, or the candidate if elected would hold, any official position or over which the public official exercises, or the candidate if elected would exercise, any authority.

(b) A person who has a legislative or administrative interest in any governmental agency in which a public official holds any official position or over which the public official exercises any authority may not offer to the public official or a relative or member of the household of the public official any gift of payment of expenses for entertainment.

(c) A person who has a legislative or administrative interest in any governmental agency in which a candidate for public office if elected would hold any official position or over which the candidate if elected would exercise any authority may not offer to the candidate or a relative or member of the household of the candidate any gift of payment of expenses for entertainment.

(5) This section does not apply to public officials subject to the Oregon Code of Judicial Conduct.

WEST'S OREGON REVISED STATUTES ANNOTATED TITLE 22. PUBLIC OFFICERS AND EMPLOYEES CHAPTER 244. GOVERNMENT ETHICS REPORTING REQUIREMENTS

244.070. Additional statements; requirements

A public official or candidate for public office shall report the following additional economic interest for the preceding calendar year only if the source of that interest is derived from an individual or business that has been doing business, does business or could reasonably be expected to do business with, or has legislative or administrative interest in, the governmental agency of which the public official holds, or the candidate if elected would hold, any official position or over which the public official exercises, or the candidate if elected would exercise, any authority:

(1) Each person to whom the public official or candidate for public office or a member of the household of the public official or candidate owes or has owed money in excess of $1,000, the interest rate on money owed and the date of the loan, except for debts owed to any federal or state regulated financial institution or retail contracts.

(2) The name, principal address and brief description of the nature of each business in which the public official or candidate for public office or a member of the household of the public official or candidate has or has had a personal, beneficial interest or

investment, including stocks or other securities, in excess of $1,000, except for individual items involved in a mutual fund or a blind trust, or a time or demand deposit in a financial institution, shares in a credit union, or the cash surrender value of life insurance.

(3) Each person for whom the public official or candidate for public office has performed services for a fee in excess of $1,000, except for any disclosure otherwise prohibited by law or by a professional code of ethics.

WEST'S OREGON REVISED STATUTES ANNOTATED
TITLE 22. PUBLIC OFFICERS AND EMPLOYEES
CHAPTER 244. GOVERNMENT ETHICS ENFORCEMENT

→244.350. Civil penalties

(1) The Oregon Government Ethics Commission may impose civil penalties not to exceed:

(a) Except as provided in paragraph (b) of this subsection, $5,000 for violation of any provision of this chapter or any resolution adopted under ORS 244.160.

(b) $25,000 for violation of ORS 244.045.

(2)(a) Except as provided in paragraph (b) of this subsection, the commission may impose civil penalties not to exceed $1,000 for violation of any provision of ORS 192.660.

(b) A civil penalty may not be imposed under this subsection if the violation occurred as a result of the governing body of the public body acting upon the advice of the public body's counsel.

(3) The commission may impose civil penalties not to exceed $250 for violation of ORS 293.708. A civil penalty imposed under this subsection is in addition to and not in lieu of a civil penalty that may be imposed under subsection (1) of this section.

(4)(a) The commission may impose civil penalties on a person who fails to file the statement required under ORS 244.050, 244.100 or 244.217. In enforcing this subsection, the commission is not required to follow the procedures in ORS 244.260 before finding that a violation of ORS 244.050, 244.100 or 244.217 has occurred.

(b) Failure to file the required statement in timely fashion is prima facie evidence of a violation of ORS 244.050, 244.100 or 244.217.

(c) The commission may impose a civil penalty of $10 for each of the first 14 days the statement is late beyond the date set by law, or by the commission under ORS 244.050, and $50 for each day thereafter. The maximum penalty that may be imposed under this subsection is $5,000.

(d) A civil penalty imposed under this subsection is in addition to and not in lieu of sanctions that may be imposed under ORS 244.380.

(5) In lieu of or in conjunction with finding a violation of law or any resolution or imposing a civil penalty under this section, the commission may issue a written letter of reprimand, explanation or education.

West's Oregon Revised Statutes Annotated
Title 16. Crimes and Punishments
Chapter 162. Offenses Against the State and Public Justice
Definitions

→162.005. Definitions

As used in ORS 162.005 to 162.425 , unless the context requires otherwise:

(1) "Pecuniary benefit" means gain or advantage to the beneficiary or to a third person pursuant to the desire or consent of the beneficiary, in the form of money, property, commercial interests or economic gain, but does not include a political campaign contribution reported in accordance with ORS chapter 260.

(2) "Public servant" means:

(a) A public official as defined in ORS 244.020;

(b) A person serving as an advisor, consultant or assistant at the request or direction of the state, any political subdivision thereof or of any governmental instrumentality within the state;

(c) A person nominated, elected or appointed to become a public servant, although not yet occupying the position; and

(d) Jurors.

West's Oregon Revised Statutes Annotated
Title 16. Crimes and Punishments
Chapter 162. Offenses Against the State and Public Justice
Bribery

→ 162.015. Bribe giving

(1) A person commits the crime of bribe giving if the person offers, confers or agrees to confer any pecuniary benefit upon a public servant with the intent to influence the public servant's vote, opinion, judgment, action, decision or exercise of discretion in an official capacity.

(2) Bribe giving is a Class B felony.

West's Oregon Revised Statutes Annotated
Title 16. Crimes and Punishments
Chapter 162. Offenses Against the State and Public Justice
Bribery

→162.025. Bribe receiving

(1) A public servant commits the crime of bribe receiving if the public servant:

(a) Solicits any pecuniary benefit with the intent that the vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced; or

(b) Accepts or agrees to accept any pecuniary benefit upon an agreement or understanding that the vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced.

(2) Bribe receiving is a Class B felony.

West's Oregon Revised Statutes Annotated
Title 17. State Legislative Department and Laws
Chapter 171. State Legislature Lobbying Regulation

→171.725. Definitions

As used in ORS 171.725 to 171.785, unless the context requires otherwise:

(1) "Compensation" has the meaning given that term in ORS 292.951.

(2) "Consideration" includes a gift, payment, distribution, loan, advance or deposit of money or anything of value, and includes a contract, promise or agreement, whether or not legally enforceable.

(3) "Executive agency" means a commission, board, agency or other body in the executive branch of state government that is not part of the legislative or judicial branch.

(4) "Executive official" means any member or member-elect of an executive agency and any member of the staff or an employee of an executive agency. A member of a state board or commission, other than a member who is employed in full-time public service, is not an executive official for purposes of ORS 171.725 to 171.785.

(5) "Judge" means an active judge serving on the Oregon Supreme Court, Court of Appeals, Oregon Tax Court, or an Oregon circuit court.

(6) "Legislative action" means introduction, sponsorship, testimony, debate, voting or any other official action on any measure, resolution, amendment, nomination, appointment, or report, or any matter that may be the subject of action by either house of the Legislative Assembly, or any committee of the Legislative Assembly, or the approval or veto thereof by the Governor.

(7) "Legislative official" means any member or member-elect of the Legislative Assembly, any member of an agency, board or committee that is part of the legislative branch, and any staff person, assistant or employee thereof.

(8) "Lobbying" means influencing, or attempting to influence, legislative action through oral or written communication with legislative officials, solicitation of executive officials or other persons to influence or attempt to influence legislative action or attempting to obtain the goodwill of legislative officials.

(9) "Lobbyist" means:

(a) Any individual who agrees to provide personal services for money or any other consideration for the purpose of lobbying.

(b) Any person not otherwise subject to paragraph (a) of this subsection who provides personal services as a representative of a corporation, association, organization or other group, for the purpose of lobbying.

(c) Any public official who lobbies.

(10) "Public agency" means a commission, board, agency or other governmental body.

(11) "Public official" means any member or member-elect of any public agency and any member of the staff or an employee of the public agency.

West's Oregon Revised Statutes Annotated
Title 17. State Legislative Department and Laws
Chapter 171. State Legislature Lobbying Regulation

→171.735. Application to certain persons

<Text subject to final change by the Oregon Office of the Legislative Counsel.>

ORS 171.740 and 171.745 do not apply to the following persons:

(1) News media, or their employees or agents, that in the ordinary course of business directly or indirectly urge legislative action but that engage in no other activities in connection with the legislative action.

(2) Any legislative official acting in an official capacity.

(3) Any individual who does not receive compensation or reimbursement of expenses for lobbying, who limits lobbying activities solely to formal appearances to give testimony before public sessions of committees of the Legislative Assembly, or public hearings of state agencies, and who, when testifying, registers an appearance in the records of the committees or agencies.

(4) A person who does not spend more than an aggregate amount of 24 hours during any calendar quarter lobbying and who does not spend an aggregate amount in excess of $100 lobbying during any calendar quarter.

(5) The Governor, chief of staff for the Governor, deputy chief of staff for the Governor, legal counsel to the Governor, deputy legal counsel to the Governor, Secretary of State, Deputy Secretary of State appointed pursuant to ORS 177.040, State Treasurer, Chief Deputy State Treasurer appointed pursuant to ORS 178.060, chief of staff for the office of the State Treasurer, Attorney General, Deputy Attorney General appointed pursuant to ORS 180.130, Superintendent of Public Instruction, Deputy Superintendent of Public Instruction appointed pursuant to ORS 326.330, Commissioner of the Bureau of Labor and Industries, deputy commissioner of the Bureau of Labor and Industries appointed pursuant to ORS 651.060, members and staff of the Oregon Law Commission who conduct the law revision program of the commission or any judge.

West's Oregon Revised Statutes Annotated
Title 17. State Legislative Department and Laws
Chapter 171. State Legislature Lobbying Regulation

→171.745. Expense statements; contents of statement; time of filing

<Text subject to final change by the Oregon Office of the Legislative Counsel.>

(1) A lobbyist registered with the Oregon Government Ethics Commission or required to register with the commission shall, according to the schedule described in ORS 171.752, file with the commission a statement showing for the applicable reporting period:

(a) The total amount of all moneys expended for food, refreshments and entertainment by the lobbyist for the purpose of lobbying.

(b) The name of any legislative or executive official to whom or for whose benefit, on any one occasion, an expenditure is made for the purposes of lobbying, and the date, name of payee, purpose and amount of that expenditure. This paragraph applies if the total amount expended on the occasion by one or more persons exceeds $50.

(2) Statements required by this section need not include amounts expended by the lobbyist for personal living and travel expenses and office overhead, including salaries and wages paid for staff and secretarial assistance, and maintenance

expenses. If the amount of any expenditure required to be included in a statement is not accurately known at the time the statement is required to be filed, an estimate of the expenditure shall be submitted in the statement and designated as an estimate. The exact amount expended for which a previous estimate was made shall be submitted in a subsequent report when the information is available.

(3) A statement required by this section shall include a copy of any notice provided to a public official or candidate under ORS 244.100.

(4) For each statement required by this section, an entity comprised of more than one lobbyist may file one statement that reports expenditures by the entity and not by individual lobbyists.

West's Oregon Revised Statutes Annotated
Title 22. Public Officers and Employees
Chapter 244. Government Ethics In General

→244.020. Definitions

<Text subject to final change by the Oregon Office of the Legislative Counsel.>

As used in this chapter, unless the context requires otherwise:

(1) "Actual conflict of interest" means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or the person's relative or any business with which the person or a relative of the person is associated unless the pecuniary benefit or detriment arises out of circumstances described in subsection (12) of this section.

(2) "Business" means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual and any other legal entity operated for economic gain but excluding any income-producing not-for-profit corporation that is tax exempt under section 501(c) of the Internal Revenue Code with which a public official or a relative of the public official is associated only as a member or board director or in a nonremunerative capacity.

(3) "Business with which the person is associated"

means:

(a) Any private business or closely held corporation of which the person or the person's relative is a director, officer, owner or employee, or agent or any private business or closely held corporation in which the person or the person's relative owns or has owned stock, another form of equity interest, stock options or debt instruments worth $1,000 or more at any point in the preceding calendar year;

(b) Any publicly held corporation in which the person or the person's relative owns or has owned $100,000 or more in stock or another form of equity interest, stock options or debt instruments at any point in the preceding calendar year;

(c) Any publicly held corporation of which the person or the person's relative is a director or officer; or

(d) For public officials required to file a statement of economic interest under ORS 244.050, any business listed as a source of income as required under ORS 244.060 (3).

(4) "Candidate" means an individual for whom a declaration of candidacy, nominating petition or certificate of nomination to public office has been filed or whose name is printed on a ballot or is expected to be or has been presented, with the individual's consent, for nomination or election to public office.

(5) "Development commission" means any entity that has the authority to purchase, develop, improve or lease land or the authority to operate or direct the use of land. This authority must be more than ministerial.

(6)(a) "Gift" means something of economic value given to a public official, a candidate or a relative or member of the household of the public official or candidate:

(A) Without valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, which is not extended to others who are not public officials or candidates or the relatives or members of the household of public officials or candidates on the same terms and conditions; or

(B) For valuable consideration less than that required from others who are not public officials or candidates.

(b) "Gift" does not mean:

(A) Contributions as defined in ORS 260.005.

(B) Gifts from relatives or members of the household of the public official or candidate.

(C) An unsolicited token or award of appreciation in the form of a plaque, trophy, desk item, wall memento or similar item, with a resale value reasonably expected to be less than $25.

(D) Informational or program material, publications or subscriptions related to the recipient's performance of official duties.

(E) Admission provided to or the cost of food or beverage consumed by a public official, or a member of the household or staff of the public official when accompanying the public official, at a reception, meal or meeting held by an organization when the public official represents state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117.

(F) Reasonable expenses paid by any unit of the federal government, a state or local government, a Native American tribe that is recognized by federal law or formally acknowledged by a state, a membership organization to which a public body as defined in ORS 174.109 pays membership dues or a not-for-profit corporation that is tax exempt under section 501(c)(3) of the Internal Revenue Code, for attendance at a convention, fact-finding mission or trip, conference or other meeting if the public official is scheduled to deliver a speech, make a presentation, participate on a panel or represent state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117.

(G) Contributions made to a legal expense trust fund established under ORS 244.209 for the benefit of the public official.

(H) Reasonable food, travel or lodging expenses provided to a public official, a relative of the public official accompanying the public official, a member of the household of the public official accompanying the public official or a staff member of the public official accompanying the public official, when the public official is representing state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117:

(i) On an officially sanctioned trade-promotion or fact-finding mission; or

(ii) In officially designated negotiations, or economic development activities, where receipt of the expenses is approved in advance.

(I) Food or beverage consumed by a public official acting in an official capacity:

(i) In association with the review, approval, execution of documents or closing of a borrowing, investment or other financial transaction, including any business agreement between state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117 and a private entity or public body as defined in ORS 174.109;

(ii) While engaged in due diligence research or presentations by the office of the State Treasurer related to an existing or proposed investment or borrowing; or

(iii) While engaged in a meeting of an advisory, governance or policy-making body of a corporation, partnership or other entity in which the office of the State Treasurer has invested moneys.

(J) Waiver or discount of registration expenses or materials provided to a public official or candidate at a continuing education event that the public official or candidate may attend to satisfy a professional licensing requirement.

(K) Expenses provided by one public official to another public official for travel inside this state to or from an event that bears a relationship to the receiving public official's office and at which the official participates in an official capacity.

(L) Food or beverage consumed by a public official or candidate at a reception where the food or beverage is provided as an incidental part of the reception and no cost is placed on the food or beverage.

(M) Entertainment provided to a public official or candidate or a relative or member of the household of the public official or candidate that is incidental to the main purpose of another event.

(N) Entertainment provided to a public official or a relative or member of the household of the public official where the public official is acting in an official capacity while representing state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117 for a ceremonial purpose.

(O) Anything of economic value offered to or solicited or received by a public official or candidate, or a relative or member of the household of the public official or candidate:

(i) As part of the usual and customary practice of the person's private business, or the person's employment or position as a volunteer with a private business, corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, not-for-profit corporation or other legal entity operated for economic value; and

(ii) That bears no relationship to the public official's or candidate's holding of, or candidacy for, the official position or public office.

(P) Reasonable expenses paid to a public school employee for accompanying students on an educational trip.

(7) “Honorarium” means a payment or something of

economic value given to a public official in exchange for services upon which custom or propriety prevents the setting of a price. Services include, but are not limited to, speeches or other services rendered in connection with an event.

(8) "Income" means income of any nature derived from any source, including, but not limited to, any salary, wage, advance, payment, dividend, interest, rent, honorarium, return of capital, forgiveness of indebtedness, or anything of economic value.

(9) "Legislative or administrative interest" means an economic interest, distinct from that of the general public, in:

(a) Any matter subject to the decision or vote of the public official acting in the public official's capacity as a public official; or

(b) Any matter that would be subject to the decision or vote of the candidate who, if elected, would be acting in the capacity of a public official.

(10) "Member of the household" means any person who resides with the public official or candidate.

(11) "Planning commission" means a county planning commission created under ORS chapter 215 or a city planning commission created under ORS chapter 227.

(12) "Potential conflict of interest" means any action or any decision or recommendation by a person

acting in a capacity as a public official, the effect of which could be to the private pecuniary benefit or detriment of the person or the person's relative, or a business with which the person or the person's relative is associated, unless the pecuniary benefit or detriment arises out of the following:

(a) An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.

(b) Any action in the person's official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person's relative or business with which the person or the person's relative is associated, is a member or is engaged.

(c) Membership in or membership on the board of directors of a nonprofit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code.

(13) "Public office" has the meaning given that term in ORS 260.005.

(14) "Public official" means any person who, when an alleged violation of this chapter occurs, is serving the State of Oregon or any of its political subdivisions or any other public body as defined in ORS 174.109 as an elected official, appointed official, employee or

agent, irrespective of whether the person is compensated for the services.

(15) "Relative" means:

(a) The spouse of the public official or candidate;

(b) Any children of the public official or of the public official's spouse;

(c) Any children of the candidate or of the candidate's spouse;

(d) Siblings, spouses of siblings or parents of the public official or of the public official's spouse;

(e) Siblings, spouses of siblings or parents of the candidate or of the candidate's spouse;

(f) Any individual for whom the public official or candidate has a legal support obligation;

(g) Any individual for whom the public official provides benefits arising from the public official's public employment or from whom the public official receives benefits arising from that individual's employment; or

(h) Any individual from whom the candidate receives benefits arising from that individual's employment.

(16) "Statement of economic interest" means a statement as described by ORS 244.060 or 244.070.

(17) "Zoning commission" means an entity to which is delegated at least some of the discretionary authority of a planning commission or governing body relating to zoning and land use matters.

West's Oregon Revised Statutes Annotated
Title 22. Public Officers and Employees
Chapter 244. Government Ethics In General

→244.025. Gift limits

<Text subject to final change by the Oregon Office of the Legislative Counsel.>

(1) During a calendar year, a public official, a candidate or a relative or member of the household of the public official or candidate may not solicit or receive, directly or indirectly, any gift or gifts with an aggregate value in excess of $50 from any single source that could reasonably be known to have a legislative or administrative interest.

(2) During a calendar year, a person who has a legislative or administrative interest may not offer to the public official or a relative or member of the household of the public official any gift or gifts with an aggregate value in excess of $50.

(3) During a calendar year, a person who has a legislative or administrative interest may not offer to the candidate or a relative or member of the household of the candidate any gift or gifts with an aggregate value in excess of $50.

(4) This section does not apply to public officials subject to the Oregon Code of Judicial Conduct.

West's Oregon Revised Statutes Annotated
Title 22. Public Officers and Employees
Chapter 244. Government Ethics In General

→244.042. Honoraria

<Text subject to final change by the Oregon Office of the Legislative Counsel.>

(1) Except as provided in subsection (3) of this section, a public official may not solicit or receive, whether directly or indirectly, honoraria for the public official or any member of the household of the public official if the honoraria are solicited or received in connection with the official duties of the public official.

(2) Except as provided in subsection (3) of this section, a candidate may not solicit or receive, whether directly or indirectly, honoraria for the candidate or any member of the household of the candidate if the honoraria are solicited or received in connection with the official duties of the public office for which the person is a candidate.

(3) This section does not prohibit:

(a) The solicitation or receipt of an honorarium or a certificate, plaque, commemorative token or other item with a value of $50 or less; or

(b) The solicitation or receipt of an honorarium for services performed in relation to the private profession, occupation, avocation or expertise of the public official or candidate.

West's Oregon Revised Statutes Annotated
Title 22. Public Officers and Employees
Chapter 244. Government Ethics Reporting Requirements

→244.070. Additional statements; requirements

<Text subject to final change by the Oregon Office of the Legislative Counsel.>

A public official or candidate shall report the following additional economic interest for the preceding calendar year only if the source of that interest is derived from an individual or business that has a legislative or administrative interest or that has been doing business, does business or could reasonably be expected to do business with the governmental agency of which the public official holds, or the candidate if elected would hold, an official position or over which the public official exercises, or the candidate if elected would exercise, any authority:

(1) Each person to whom the public official or candidate or a member of the household of the public official or candidate owes or has owed money in excess of $1,000, the interest rate on money owed and the date of the loan, except for debts owed to any federal or state regulated financial institution or retail contracts.

(2) The name, principal address and brief description of the nature of each business in which the public

official or candidate or a member of the household of the public official or candidate has or has had a personal, beneficial interest or investment, including stocks or other securities, in excess of $1,000, except for individual items involved in a mutual fund or a blind trust, or a time or demand deposit in a financial institution, shares in a credit union, or the cash surrender value of life insurance.

(3) Each person for whom the public official or candidate has performed services for a fee in excess of $1,000, except for any disclosure otherwise prohibited by law or by a professional code of ethics.

West's Oregon Revised Statutes Annotated
Title 22. Public Officers and Employees
Chapter 244. Government Ethics Enforcement

→244.350. Civil penalties

<Text subject to final change by the Oregon Office of the Legislative Counsel.>

(1) The Oregon Government Ethics Commission may impose civil penalties not to exceed:

(a) Except as provided in paragraph (b) of this subsection, $5,000 for violation of any provision of this chapter or any resolution adopted under ORS 244.160.

(b) $25,000 for violation of ORS 244.045.

(2)(a) Except as provided in paragraph (b) of this subsection, the commission may impose civil penalties not to exceed $1,000 for violation of any provision of ORS 192.660.

(b) A civil penalty may not be imposed under this subsection if the violation occurred as a result of the governing body of the public body acting upon the advice of the public body's counsel.

(3) The commission may impose civil penalties not to exceed $250 for violation of ORS 293.708. A civil penalty imposed under this subsection is in addition to and not in lieu of a civil penalty that may be imposed under subsection (1) of this section.

(4)(a) The commission may impose civil penalties on a person who fails to file the statement required under ORS 244.050 or 244.217. In enforcing this subsection, the commission is not required to follow the procedures in ORS 244.260 before finding that a violation of ORS 244.050 or 244.217 has occurred.

(b) Failure to file the required statement in timely fashion is prima facie evidence of a violation of ORS 244.050 or 244.217.

(c) The commission may impose a civil penalty of $10 for each of the first 14 days the statement is late beyond the date set by law, or by the commission under ORS 244.050, and $50 for each day thereafter. The maximum penalty that may be imposed under this subsection is $5,000.

(5) In lieu of or in conjunction with finding a violation of law or any resolution or imposing a civil penalty under this section, the commission may issue a written letter of reprimand, explanation or education.

West's Colorado Revised Statutes Annotated
Constitution of the State of Colorado [1876]
Article XXIX. Ethics in Government

→§ 1. Purposes and findings

(1) The people of the state of Colorado hereby find and declare that:

(a) The conduct of public officers, members of the general assembly, local government officials, and government employees must hold the respect and confidence of the people;

(b) They shall carry out their duties for the benefit of the people of the state;

(c) They shall, therefore, avoid conduct that is in violation of their public trust or that creates a justifiable impression among members of the public that such trust is being violated;

(d) Any effort to realize personal financial gain through public office other than compensation provided by law is a violation of that trust; and

(e) To ensure propriety and to preserve public confidence, they must have the benefit of specific standards to guide their conduct, and of a penalty mechanism to enforce those standards.

(2) The people of the state of Colorado also find and declare that there are certain costs associated with holding public office and that to ensure the integrity of the office, such costs of a reasonable and necessary

nature should be born by the state or local government.

West's Colorado Revised Statutes Annotated
Constitution of the State of Colorado [1876]
Article XXIX. Ethics in Government

→§ 2. Definitions

As used in this article, unless the context otherwise requires:

(1) "Government employee" means any employee, including independent contractors, of the state executive branch, the state legislative branch, a state agency, a public institution of higher education, or any local government, except a member of the general assembly or a public officer.

(2) "Local government" means county or municipality.

(3) "Local government official" means an elected or appointed official of a local government but does not include an employee of a local government.

(4) "Person" means any individual, corporation, business trust, estate, trust, limited liability company, partnership, labor organization, association, political party, committee, or other legal entity.

(5) "Professional lobbyist" means any individual who engages himself or herself or is engaged by any other person for pay or for any consideration for lobbying. "Professional lobbyist" does not include any volunteer lobbyist, any state official or employee acting in his or her official capacity, except those

designated as lobbyists as provided by law, any elected public official acting in his or her official capacity, or any individual who appears as counsel or advisor in an adjudicatory proceeding.

(6) "Public officer" means any elected officer, including all statewide elected officeholders, the head of any department of the executive branch, and elected and appointed members of state boards and commissions. "Public officer" does not include a member of the general assembly, a member of the judiciary, any local government official, or any member of a board, commission, council or committee who receives no compensation other than a per diem allowance or necessary and reasonable expenses.

West's Colorado Revised Statutes Annotated
Constitution of the State of Colorado [1876]
Article XXIX. Ethics in Government
→§ 3. Gift ban

(1) No public officer, member of the general assembly, local government official, or government employee shall accept or receive any money, forbearance, or forgiveness of indebtedness from any person, without such person receiving lawful consideration of equal or greater value in return from the public officer, member of the general assembly, local government official, or government employee who accepted or received the money, forbearance or forgiveness of indebtedness.

(2) No public officer, member of the general assembly, local government official, or government employee, either directly or indirectly as the beneficiary of a gift or thing of value given to such person's spouse or dependent child, shall solicit, accept or receive any gift or other thing of value having either a fair market value or aggregate actual cost greater than fifty dollars ($50) in any calendar year, including but not limited to, gifts, loans, rewards, promises or negotiations of future employment, favors or services, honoraria, travel, entertainment, or special discounts, from a person, without the person receiving lawful consideration of equal or greater value in return from the public officer, member of the general assembly, local government official, or government employee who solicited, accepted or received the gift or other thing of value.

(3) The prohibitions in subsections (1) and (2) of this section do not apply if the gift or thing of value is:

(a) A campaign contribution as defined by law;

(b) An unsolicited item of trivial value less than fifty dollars ($50), such as a pen, calendar, plant, book, note pad or other similar item;

(c) An unsolicited token or award of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;

(d) Unsolicited informational material, publications, or subscriptions related to the recipient's performance of official duties;

(e) Admission to, and the cost of food or beverages consumed at, a reception, meal or meeting by an organization before whom the recipient appears to speak or to answer questions as part of a scheduled program;

(f) Reasonable expenses paid by a nonprofit organization or other state or local government for attendance at a convention, fact-finding mission or trip, or other meeting if the person is scheduled to deliver a speech, make a presentation, participate on a panel, or represent the state or local government, provided that the non-profit organization receives less than five percent (5%) of its funding from for-profit organizations or entities;

(g) Given by an individual who is a relative or personal friend of the recipient on a special occasion.

(h) A component of the compensation paid or other incentive given to the recipient in the normal course of employment.

(4) Notwithstanding any provisions of this section to the contrary, and excepting campaign contributions as defined by law, no professional lobbyist, personally or on behalf of any other person or entity, shall knowingly offer, give, or arrange to give, to any public officer, member of the general assembly, local government official, or government employee, or to a member of such person's immediate family, any gift or thing of value, of any kind or nature, nor knowingly pay for any meal, beverage, or other item to be consumed by such public officer, member of the general assembly, local government official or government employee, whether or not such gift or meal, beverage or other item to be consumed is offered, given or paid for in the course of such lobbyist's business or in connection with a personal or social event; provided, however, that a professional lobbyist shall not be prohibited from offering or giving to a public officer, member of the general assembly, local government official or government employee who is a member of his or her immediate family any such gift, thing of value, meal, beverage or other item.

(5) The general assembly shall make any conforming amendments to the reporting and disclosure requirements for public officers, members of the

general assembly and professional lobbyists, as provided by law, to comply with the requirements set forth in this section.

(6) The fifty-dollar ($50) limit set forth in subsection (2) of this section shall be adjusted by an amount based upon the percentage change over a four-year period in the United States bureau of labor statistics consumer price index for Denver-Boulder-Greeley, all items, all consumers, or its successor index, rounded to the nearest lowest dollar. The first adjustment shall be done in the first quarter of 2011 and then every four years thereafter.

Iowa Code Annotated
Title II. Elections and Official Duties [Chs. 39-79]
Subtitle 2. Public Officers and Employees [Chs. 64-71]
Chapter 68B. Government Ethics and Lobbying
Subchapter I. Title and Definitions

→68B.2. Definitions

As used in this chapter, unless the context otherwise requires:

1. "Agency" means a department, division, board, commission, bureau, authority, or office of the executive or legislative branch of state government, the office of attorney general, the state board of regents, community colleges, and the office of the governor, including a regulatory agency, or any department, division, board, commission, bureau, or office of a political subdivision of the state, but does not include any agricultural commodity promotional board, which is subject to a producer referendum.

2. "Agency of state government" or "state agency" means a department, division, board, commission, bureau, authority, or office of the executive or legislative branch of state government, the office of attorney general, the state board of regents, community colleges, and the office of the governor, including a regulatory agency, but does not include any agricultural commodity promotional board, which is subject to a producer referendum.

3. "Board" means the Iowa ethics and campaign

disclosure board.

4. "Candidate" means a candidate under chapter 68A but does not include any judge standing for retention in a judicial election.

5. "Candidate's committee" means the committee designated by a candidate for a state, county, city, or school office, as provided under chapter 68A, to receive contributions in excess of seven hundred fifty dollars in the aggregate, expend funds in excess of seven hundred fifty dollars in the aggregate, or incur indebtedness on behalf of the candidate in excess of seven hundred fifty dollars in the aggregate in any calendar year.

6. "Client" means a private person or a state, federal, or local government entity that pays compensation to or designates an individual to be a lobbyist.

7. "Compensation" means any money, thing of value, or financial benefit conferred in return for services rendered or to be rendered.

8. "Contribution" means a loan, advance, deposit, rebate, refund, transfer of money, an in-kind transfer, or the payment of compensation for the personal services of another person.

9. "Gift" means a rendering of anything of value in return for which legal consideration of equal or greater value is not given and received.

10. "Honorarium" means anything of value that is

accepted or given as consideration for an appearance, speech, or article.

11. "Immediate family members" means the spouse and dependent children of a public official or public employee.

12. "Legislative employee" means a permanent full-time employee of the general assembly but does not include members of the general assembly.

13. a. "Lobbyist" means an individual who, by acting directly, does any of the following:

(1) Receives compensation to encourage the passage, defeat, approval, veto, or modification of legislation, a rule, or an executive order by the members of the general assembly, a state agency, or any statewide elected official.

(2) Is a designated representative of an organization which has as one of its purposes the encouragement of the passage, defeat, approval, veto, or modification of legislation, a rule, or an executive order before the general assembly, a state agency, or any statewide elected official.

(3) Represents the position of a federal, state, or local government agency, in which the person serves or is employed as the designated representative, for purposes of encouraging the passage, defeat, approval, veto, or modification of legislation, a rule, or an executive order by members of the general assembly, a state agency, or any statewide elected

official.

(4) Makes expenditures of more than one thousand dollars in a calendar year, other than to pay compensation to an individual who provides the services specified under subparagraph (1) or to communicate with only the members of the general assembly who represent the district in which the individual resides, to communicate in person with members of the general assembly, a state agency, or any statewide elected official for purposes of encouraging the passage, defeat, approval, veto, or modification of legislation, a rule, or an executive order.

b. "Lobbyist" does not mean:

(1) Officials and employees of a political party organized in the state of Iowa representing more than two percent of the total votes cast for governor in the last preceding general election, but only when representing the political party in an official capacity.

(2) Representatives of the news media only when engaged in the reporting and dissemination of news and editorials.

(3) All federal, state, and local elected officials, while performing the duties and responsibilities of office.

(4) Persons whose activities are limited to appearances to give testimony or provide information or assistance at sessions of committees

of the general assembly or at public hearings of state agencies or who are giving testimony or providing information or assistance at the request of public officials or employees.

(5) Members of the staff of the United States Congress or the Iowa general assembly.

(6) Agency officials and employees while they are engaged in activities within the agency in which they serve or are employed or with another agency with which the official's or employee's agency is involved in a collaborative project.

(7) An individual who is a member, director, trustee, officer, or committee member of a business, trade, labor, farm, professional, religious, education, or charitable association, foundation, or organization who either is not paid compensation or is not specifically designated as provided in paragraph "a", subparagraph (1) or (2).

(8) Persons whose activities are limited to submitting data, views, or arguments in writing, or requesting an opportunity to make an oral presentation under section 17A.4, subsection 1.

14. "Local employee" means a person employed by a political subdivision of this state and does not include an independent contractor.

15. "Local official" means an officeholder of a political subdivision of this state.

16. “Member of the general assembly” means an individual duly elected to the senate or the house of representatives of the state of Iowa.

17. “Official” means all statewide elected officials, the executive or administrative head or heads of an agency of state government, the deputy executive or administrative head or heads of an agency of state government, members of boards or commissions as defined under section 7E.4, and heads of the major subunits of departments or independent state agencies whose positions involve a substantial exercise of administrative discretion or the expenditure of public funds as defined under rules of the board adopted in consultation with the department or agency and pursuant to chapter 17A. “Official” does not include officers or employees of political subdivisions of the state, members of the general assembly, legislative employees, officers or employees of the judicial branch of government who are not members or employees of the office of attorney general, members of state government entities which are or exercise the same type of authority that is exercised by councils or committees as defined under section 7E.4, or members of any agricultural commodity promotional board, if the board is subject to a producer referendum.

18. “Person” means, without limitation, any individual, corporation, business trust, estate, trust, partnership or association, labor union, or any other legal entity.

19. “Public disclosure” means a written report filed

by a person as required by this chapter or required by rules adopted and issued pursuant to this chapter.

20. "Public employee" means state employees, legislative employees, and local employees.

21. "Public office" means any state, county, city, or school office or any other office of a political subdivision of the state that is filled by election.

22. "Public official" means officials, local officials, and members of the general assembly.

23. "Regulatory agency" means the department of agriculture and land stewardship, department of workforce development, department of commerce, Iowa department of public health, department of public safety, department of education, state board of regents, department of human services, department of revenue, department of inspections and appeals, department of administrative services, public employment relations board, state department of transportation, civil rights commission, department of public defense, Iowa ethics and campaign disclosure board, and department of natural resources.

24. "Restricted donor" means a person who is in any of the following categories:

a. Is or is seeking to be a party to any one or any combination of sales, purchases, leases, or contracts to, from, or with the agency in which the donee holds office or is employed.

b. Will personally be, or is the agent of a person who will be, directly and substantially affected financially by the performance or nonperformance of the donee's official duty in a way that is greater than the effect on the public generally or on a substantial class of persons to which the person belongs as a member of a profession, occupation, industry, or region.

c. Is personally, or is the agent of a person who is, the subject of or party to a matter which is pending before a subunit of a regulatory agency and over which the donee has discretionary authority as part of the donee's official duties or employment within the regulatory agency subunit.

d. Is a lobbyist or a client of a lobbyist with respect to matters within the donee's jurisdiction.

25. "State employee" means a person who is not an official and is a paid employee of the state of Iowa and does not include an independent contractor, an employee of the judicial branch who is not an employee of the office of attorney general, an employee of the general assembly, an employee of a political subdivision of the state, or an employee of any agricultural commodity promotional board, if the board is subject to a producer referendum.

26. "Statewide elected official" means the governor, lieutenant governor, secretary of state, auditor of state, treasurer of state, secretary of agriculture, and attorney general of the state of Iowa.

Iowa Code Annotated
Title II. Elections and Official Duties [Chs. 39-79]
Subtitle 2. Public Officers and Employees [Chs. 64-71]
Chapter 68B. Government Ethics and Lobbying
Subchapter III. Gifts and Offers--General Penalties

→68B.22. Gifts accepted or received

<[Text subject to final changes by the Iowa Code Editor for Code 2010.]>

1. Except as otherwise provided in this section, a public official, public employee, or candidate, or that person's immediate family member shall not, directly or indirectly, accept or receive any gift or series of gifts from a restricted donor. A public official, public employee, candidate, or the person's immediate family member shall not solicit any gift or series of gifts from a restricted donor at any time.

2. Except as otherwise provided in this section, a restricted donor shall not, directly or indirectly, offer or make a gift or a series of gifts to a public official, public employee, or candidate. Except as otherwise provided in this section, a restricted donor shall not, directly or indirectly, join with one or more other restricted donors to offer or make a gift or a series of gifts to a public official, public employee, or candidate.

3. A restricted donor may give, and a public official,

public employee, or candidate, or the person's immediate family member, may accept an otherwise prohibited nonmonetary gift or a series of otherwise prohibited nonmonetary gifts and not be in violation of this section if the nonmonetary gift or series of nonmonetary gifts is donated within thirty days to a public body, the department of administrative services, or a bona fide educational or charitable organization, if no part of the net earnings of the educational or charitable organization inures to the benefit of any private stockholder or other individual. All such items donated to the department of administrative services shall be disposed of by assignment to state agencies for official use or by public sale. A person subject to section 8.7 that receives a gift pursuant to this subsection shall file a report pursuant to section 8.7.

4. Notwithstanding subsections 1 and 2, the following gifts may be received by public officials, public employees, candidates, or members of the immediate family of public officials, public employees, or candidates:

a. Contributions to a candidate or a candidate's committee.

b. Informational material relevant to a public official's or public employee's official functions, such as books, pamphlets, reports, documents, periodicals, or other information that is recorded in a written, audio, or visual format.

c. Anything received from anyone related within the fourth degree by kinship or marriage, unless the donor is acting as an agent or intermediary for another person not so related.

d. An inheritance.

e. Anything available or distributed free of charge to members of the general public without regard to the official status of the recipient. This paragraph shall not apply to functions described under paragraph "s".

f. Items received from a bona fide charitable, professional, educational, or business organization to which the donee belongs as a dues-paying member, if the items are given to all members of the organization without regard to individual members' status or positions held outside of the organization and if the dues paid are not inconsequential when compared to the items received.

g. Actual expenses of a donee for food, beverages, registration, travel, and lodging for a meeting, which is given in return for participation in a panel or speaking engagement at the meeting when the expenses relate directly to the day or days on which the donee has participation or presentation responsibilities.

h. Plaques or items of negligible resale value which are given as recognition for the public services of the recipient.

i. Food and beverages provided at a meal that is part of a bona fide event or program at which the recipient is being honored for public service.

j. Nonmonetary items with a value of three dollars or less that are received from any one donor during one calendar day.

k. Items or services solicited by or given to a state, national, or regional government organization in which the state of Iowa or a political subdivision of the state is a member for purposes of a business or educational conference, seminar, or other meeting; or solicited by or given to state, national, or regional government organizations, whose memberships and officers are primarily composed of state or local government officials or employees, for purposes of a business or educational conference, seminar, or other meeting.

l. Items or services received by members or representatives of members at a regularly scheduled event that is part of a business or educational conference, seminar, or other meeting that is sponsored and directed by any state, national, or regional government organization in which the state of Iowa or a political subdivision of the state is a member, or received at such an event by members or representatives of members of state, national, or regional government organizations whose memberships and officers are primarily composed of state or local government officials or employees.

m. Funeral flowers or memorials to a church or nonprofit organization.

n. Gifts which are given to a public official or public employee for the public official's or public employee's wedding or twenty-fifth or fiftieth wedding anniversary.

o. Payment of salary or expenses by a person's employer or the firm in which the person is a member for the cost of attending a meeting of a subunit of an agency when the person whose expenses are being paid serves on a board, commission, committee, council, or other subunit of the agency and the person is not entitled to receive compensation or reimbursement of expenses from the state or a political subdivision of the state for attending the meeting.

p. Gifts of food, beverages, travel, or lodging received by a public official or public employee if all of the following apply:

(1) The public official or public employee is officially representing an agency in a delegation whose sole purpose is to attract a specific new business to locate in the state, encourage expansion or retention of an existing business already established in the state, or to develop markets for Iowa businesses or products.

(2) The donor of the gift is not the business or businesses being contacted. However, food or beverages provided by the business or businesses being contacted which are consumed during the meeting are not a gift under section 68B.2, subsection 9, or this section.

(3) The public official or public employee plays a significant role in the presentation to the business or businesses on behalf of the public official's or public employee's agency.

q. Gifts other than food, beverages, travel, and lodging received by a public official or public employee which are received from a person who is a citizen of a country other than the United States and are given during a ceremonial presentation or as a result of a custom of the other country and are of personal value only to the donee.

r. Actual registration costs for informational meetings or sessions which assist a public official or public employee in the performance of the person's official functions. The costs of food, drink, lodging, and travel are not "registration costs" under this paragraph. Meetings or sessions which a public official or public employee attends for personal or professional licensing purposes are not "informational meetings or sessions which assist a public official or public employee in the performance of the person's official functions" under this paragraph.

s. Gifts of food, beverage, and entertainment received at a function where every member of the general assembly has been invited to attend, when the function takes place during a regular session of the general assembly. A sponsor of a function under this paragraph shall file a registration prior to the function taking place identifying the sponsor and the date, time, and location of the function. The registration shall be filed with the person or persons designated by the secretary of the senate and the chief clerk of the house and with the board. After a function takes place, the sponsor of the function shall file a report disclosing the total amount expended, including in-kind expenditures, on food, beverage, and entertainment for the function. The report shall be filed with the person or persons designated by the secretary of the senate and the chief clerk of the house and with the board within twenty-eight calendar days following the date of the function.

5. For purposes of determining the value of an item given or received, an individual who gives an item on behalf of more than one person shall not divide the value of the item by the number of persons on whose behalf the item is given and the value of an item received shall be the value actually received by the donee.

6. A gift shall not be considered to be received by a public official or public employee if the state is the donee of the gift and the public official or public employee is required to receive the gift on behalf of the state as part of the performance of the person's duties of office or employment.

7. A person shall not request, and a member of the general assembly shall not agree, that a member of the general assembly sell tickets for a community-related social event that is to be held for members of the general assembly in Polk county during the

legislative session. This section shall not apply to Polk county or city of Des Moines events that are open to the public generally or are held only for Polk county or city of Des Moines legislators.

8. Except as otherwise provided in subsection 4, an organization or association which has as one of its purposes the encouragement of the passage, defeat, introduction, or modification of legislation shall not give and a member of the general assembly shall not receive food, beverages, registration, or scheduled entertainment with a per person value in excess of three dollars.

IOWA 2010 LEGISLATIVE SERVICE Eighty-Third General Assembly, Second Regular Session

Additions are indicated by **Text**; deletions by ~~Text~~. Changes in tables are made but not highlighted.
Vetoed provisions within tabular material are not displayed.

H.F. 2109
West's No. 5
ELECTIONS--ETHICS--DISCLOSURE

AN ACT RELATING TO ETHICS LAWS BY ESTABLISHING DISCLOSURE REQUIREMENTS, PROVIDING JURISDICTIONAL AUTHORITY, AND ALLOWING CERTAIN PROCEDURES IN RESOLVING ETHICS COMPLAINTS, AND INCLUDING EFFECTIVE DATE PROVISIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 68B.22, subsection 4, paragraph s, Code Supplement 2009, is amended to read as follows:

<< IA ST § 68B.22 >>

s. Gifts of food, beverage, and entertainment received ~~by public officials or public employees~~ at a function where every member of the general assembly has been invited to attend, when the function takes place during a regular session of the general assembly. A sponsor of a function under this paragraph shall **file a registration prior to the function taking place identifying the sponsor and the date, time, and location of the function. The registration shall be filed with the person or persons designated by the secretary of the senate and the chief clerk of the house and with the board. After a function takes place, the sponsor of the function shall** file a report disclosing the total amount expended, including in-kind expenditures, on food, beverage, and entertainment for the function. The report shall be filed with the person or persons designated by the secretary of the senate and the chief clerk of the house **and with the board** within ~~five business~~**twenty-eight calendar** days following the date of the function. ~~The person or persons designated by the secretary of the senate and the chief clerk of the house shall forward a copy of each report to the board.~~

Sec. 2. Section 68B.31, subsection 4, paragraph a, subparagraphs (3) and (4), Code 2009, are amended to read as follows:

<< IA ST § 68B.31 >>

(3) Issue advisory opinions interpreting the intent of constitutional and statutory provisions relating to legislators,~~and~~ lobbyists**, and clients** as well as interpreting the code of ethics and rules issued pursuant to this section. Opinions shall be issued when approved by a majority of the six members and

may be issued upon the written request of a member of the general assembly or upon the committee's initiation. Opinions are not binding on the legislator,~~or~~ lobbyist**, or client**.

(4) Receive and hear complaints and charges against members of its house**, lobbyists, or clients of a lobbyist** alleging a violation of the code of ethics, rules governing lobbyists, this chapter, or other matters referred to it by its house or the independent special counsel. The committee shall recommend rules for the receipt and processing of findings of probable cause relating to ethical violations of members of the general assembly,~~or~~ lobbyists**, or clients of lobbyists** during the legislative session and those received after the general assembly adjourns.

Sec. 3. Section 68B.31, subsection 5, Code 2009, is amended to read as follows:

<< IA ST § 68B.31 >>

5. Any person may file a complaint with the ethics committee of either house alleging that a member of the general assembly,~~or a~~ lobbyist**, or client of a lobbyist** before the general assembly has committed a violation of this chapter. The ethics committee shall prescribe and provide forms for this purpose. The complaint shall include the name and address of the complainant and a statement of the facts believed to be true that form the basis of the complaint, including the sources of information and approximate dates of the acts alleged and a

certification by the complainant under penalty of perjury that the facts stated to be true are true to the best of the complainant's knowledge.

Sec. 4. Section 68B.31, subsection 7, Code 2009, is amended to read as follows:

<< IA ST § 68B.31 >>

7. **a.** If the ethics committee determines that a complaint is not valid, the complaint shall be dismissed and returned to the complainant with a notice of dismissal stating the reason or reasons for the dismissal. If the ethics committee determines that a complaint is valid **and the ethics committee does not take action under rules adopted pursuant to paragraph "b"**, the ethics committee shall request that the chief justice of the supreme court appoint an independent special counsel to investigate the allegations contained in the complaint to determine whether there is probable cause to believe that a violation of this chapter has occurred and whether an evidentiary hearing on the complaint should be held. Payment of costs for the independent special counsel shall be made from section 2.12.

b. The ethics committee may adopt rules for purposes of taking action on valid complaints without requesting the appointment of an independent special counsel and without requiring action by the appropriate house pursuant to subsection 11. Such action may only be taken if the committee determines that

no dispute exists between the parties regarding material facts that establish a violation.

Sec. 5. Section 68B.31, subsection 8, Code 2009, is amended to read as follows:

<< IA ST § 68B.31 >>

8. If a hearing on the complaint is ordered the ethics committee shall receive all admissible evidence, determine any factual or legal issues presented during the hearing, and make findings of fact based upon evidence received. Hearings shall be conducted in the manner prescribed in section 17A.12. The rules of evidence applicable under section 17A.14 shall also apply in hearings before the ethics committee. Clear and convincing evidence shall be required to support a finding that the member of the general assembly,~~or~~ lobbyist, **or client** before the general assembly has committed a violation of this chapter. Parties to a complaint may, subject to the approval of the ethics committee, negotiate for settlement of disputes that are before the ethics committee. Terms of any negotiated settlements shall be publicly recorded. If a complaint is filed or initiated less than ninety days before the election for a state office, for which the person named in the complaint is the incumbent officeholder, the ethics committee shall, if possible, set the hearing at the earliest available date so as to allow the issue to be resolved before the election. An extension of time for a hearing may be granted when both parties mutually agree on an alternate date for the hearing.

The ethics committee shall make every effort to hear all ethics complaints within three months of the date that the complaints are filed. However, after three months from the date of the filing of the complaint, extensions of time for purposes of preparing for hearing may only be granted by the ethics committee when the party charged in the complaint with the ethics violation consents to an extension. If the party charged does not consent to an extension, the ethics committee shall not grant any extensions of time for preparation prior to hearing. All complaints alleging a violation of this chapter or the code of ethics shall be heard within nine months of the filing of the complaint. Final dispositions of violations, which the ethics committee has found to have been established by clear and convincing evidence, shall be made within thirty days of the conclusion of the hearing on the complaint.

Sec. 6. Section 68B.32A, subsection 5, Code Supplement 2009, is amended to read as follows:

<< IA ST § 68B.32A >>

5. Receive and file registration ~~and reports~~ from lobbyists of the executive branch of state government, client disclosure from clients of lobbyists of the executive branch of state government, personal financial disclosure information from officials and employees in the executive branch of state government who are required to file personal financial disclosure information under this chapter, and gift and bequest disclosure information pursuant to section 8.7. The

board, upon its own motion, may initiate action and conduct a hearing relating to reporting requirements under this chapter or section 8.7.

Sec. 7. Section 68B.34A, Code Supplement 2009, is amended to read as follows:

<< IA ST § 68B.34A >>

68B.34A. Actions commenced against local officials or employees

1. Complaints alleging conduct of local officials or local employees which violates this chapter, except for sections 68B.36~~, 68B.37,~~ and 68B.38, shall be filed with the county attorney in the county where the accused resides. However, if the county attorney is the person against whom the complaint is filed, or if the county attorney otherwise has a personal or legal conflict of interest, the complaint shall be referred to another county attorney.

2. Complaints alleging conduct of local officials or local employees which violates section 68B.36~~, 68B.37,~~ or 68B.38 shall be filed with the ethics committee of the appropriate house of the general assembly if the conduct involves lobbying activities before the general assembly or with the board if the conduct involves lobbying activities before the executive branch.

Sec. 8. Section 68B.36, subsections 1 and 5, Code 2009, are amended to read as follows:

<< IA ST § 68B.36 >>

1. All lobbyists shall, on or before the day their lobbying activity begins, register by filing a lobbyist's registration statement at times and in the manner provided in this section. **In addition to any other information required by the general assembly and the board, a lobbyist shall identify in the registration statement all clients of the lobbyist.** Lobbyists engaged in lobbying activities before the general assembly shall file the statement with the chief clerk of the house of representatives or the secretary of the senate. Lobbyists engaged in lobbying activities before the office of the governor or any state agency shall file the statement with the board. The chief clerk of the house and the secretary of the senate shall provide appropriate registration forms to lobbyists before the general assembly. The board shall prescribe appropriate registration forms for lobbyists before the office of the governor and state agencies.

5. ~~All federal, state, and local officials or employees representing the official positions of their departments, commissions, boards, or agencies shall, when lobbying the general assembly, present to the chief clerk of the house or the secretary of the senate a letter of authorization from their department or agency heads prior to the commencement of their lobbying. When lobbying a state agency or the office of the governor, the letter shall be presented to the board. The lobbyist registration statement of these officials and employees shall not be deemed complete until the letter of authorization is attached.~~ Federal,

state, and local officials who wish to lobby in opposition to the official position of their departments, commissions, boards, or agencies must indicate this on their lobbyist registration statements.

Sec. 9. Section 68B.38, subsection 1, Code 2009, is amended to read as follows:

<< IA ST § 68B.38 >>

1. On or before July 31 of each year, a lobbyist's client shall file with the general assembly ~~or~~**and** board a report that contains information on all salaries, fees, retainers, and reimbursement of expenses paid ~~or anticipated to be paid~~ by the lobbyist's client to the lobbyist for lobbying purposes during the preceding twelve calendar months, concluding on June 30 of each year. **The amount reported to the general assembly and the board shall include the total amount of all salaries, fees, retainers, and reimbursement of expenses paid to a lobbyist for lobbying both the legislative and executive branches.**

<< Repealed: IA ST § 68B.37 >>

Sec. 10. Repeal. Section 68B.37, Code 2009, is repealed.

<< Note: IA ST §§ 68B.22, 68B.31, 68B.32A, 68B.34A, 68B.36, 68B.37, 68B.38 >>

Sec. 11. Effective upon enactment. This Act, being

deemed of immediate importance, takes effect upon enactment.

Approved February 10, 2010.
IA LEGIS H.F. 2109 (2010)

West's Annotated Code of Maryland State Government

Title 15. Public Ethics

Subtitle 5. Conflicts of Interest

Part I. General Provisions

→§ 15-505. Solicitation or acceptance of gifts or honoraria

Gift solicitation prohibited

(a)(1) An official or employee may not solicit any gift.

(2) An official may not directly solicit or facilitate the solicitation of a gift, on behalf of another person, from an individual regulated lobbyist described in § 15-701(a)(1) of this title.

Gift acceptance prohibited

(b) Except as provided in subsection (c) of this section, an official or employee may not knowingly accept a gift, directly or indirectly, from an entity that the official or employee knows or has reason to know:

(1) does or seeks to do any business of any kind, regardless of amount, with the official's or employee's governmental unit;

(2) engages in an activity that is regulated or controlled by the official's or employee's governmental unit;

(3) has a financial interest that may be affected

substantially and materially, in a manner distinguishable from the public generally, by the performance or nonperformance of the official's or employee's official duties; or

(4) is a regulated lobbyist with respect to matters within the jurisdiction of the official or employee.

Exceptions

(c)(1) Notwithstanding subsection (b) of this section, an official or employee may accept a gift specified in paragraph (2) of this subsection unless:

(i) the gift would tend to impair the impartiality and independent judgment of the official or employee; or

(ii) as to a gift of significant value:

1. the gift would give the appearance of impairing the impartiality and independent judgment of the official or employee; or

2. the official or employee believes or has reason to believe that the gift is designed to impair the impartiality and independent judgment of the official or employee.

(2) Subject to paragraph (1) of this subsection, subsection (b) of this section does not apply to:

(i) 1. except for officials of the Legislative Branch, meals or beverages received and consumed by the official or employee in the presence of the donor or sponsoring entity;

2. for officials of the Legislative Branch, food or beverages received and consumed by the official in the presence of the donor or sponsoring entity as part of a meal or reception, to which were invited all members of a legislative unit;

3. for a member of the General Assembly, food or beverages received from a donor or sponsoring entity, other than an individual regulated lobbyist described in § 15-701(a)(1) of this title, during a period when the General Assembly is not in session, at a location that is within a county that contains the member's district, provided that the donor or sponsoring entity is located within a county that contains the member's district; or

4. for a member of the General Assembly, food or beverages received at the time and geographic location of a meeting of a legislative organization for which the member's presiding officer has approved the member's attendance at State expense;

(ii) ceremonial gifts or awards of insignificant monetary value;

(iii) except for a State official of the Executive or Legislative Branch, unsolicited gifts of nominal value;

(iv) as to a State official of the Executive or Legislative Branch, unsolicited gifts that are not meals or alcoholic beverages and that do not exceed $20 in cost, from a regulated lobbyist;

(v) trivial gifts of informational value;

(vi) in return for participation on a panel or a speaking engagement at a meeting, reasonable expenses for food, travel, lodging, or scheduled entertainment of the official or employee if the expenses are associated with the meeting, except that, if such expenses for a State official of the Legislative or Executive Branch are to be paid by a regulated lobbyist and are anticipated to exceed $500, the official shall notify the appropriate advisory body before attending the meeting;

(vii) as to a member of the General Assembly, reasonable expenses for food, travel, lodging, or scheduled entertainment to attend a legislative conference that has been approved by the member's presiding officer;

(viii) tickets or free admission extended to an elected constitutional officer from the person sponsoring or conducting the event, as a courtesy or ceremony to the office, to attend a charitable, cultural, or political event;

(ix) a specific gift or class of gifts exempted from subsection (b) of this section by the Ethics Commission upon a written finding that:

1. acceptance of the gift or class of gifts would not be detrimental to the impartial conduct of government; and

2. the gift is purely personal and private in nature;

(x) a gift from:

1. an individual related to the official or employee by blood or marriage; or

2. any other individual who is a member of the household of the official or employee; or

(xi) to the extent provided in subsection (d) of this section, honoraria.

Honoraria

(d)(1) Except as provided in subsection (c)(2)(vi) of this section, a State official of the Legislative Branch may not accept an honorarium.

(2) Except as provided in paragraph (1) of this subsection and subject to subsection (c)(1) of this section, an official or employee may accept an honorarium if:

(i) the honorarium is limited to reasonable expenses for the official's meals, travel, and lodging, and reasonable and verifiable expenses for care of a child or dependent adult, that are actually incurred;

(ii) the honorarium consists of gifts described in subsection (c)(2)(ii) through (iv) of this section; or

(iii) the official or employee is a faculty member of a State institution of higher education who does not hold another position as an official that precludes receiving the honorarium.

(3) Other than as allowed by paragraph (2) of this subsection, an honorarium may not be accepted, even if permitted by subsection (c)(1) of this section, if:

(i) the payor of the honorarium has an interest that may be affected substantially and materially, in a manner distinguishable from the public generally, by the performance or nonperformance of the official's or employee's official duties; and

(ii) the offering of the honorarium is related in any way to the official's or employee's official position.

Gifts from contractors

(d-1) An official or employee may not accept a gift that is prohibited under § 13-211 of the State Finance and Procurement Article.

Exemptions from prohibitions

(e) By regulation, the Ethics Commission may define further exemptions from this section as may be necessary.

West's Annotated Code of Maryland
State Government
Title 15. Public Ethics
Subtitle 7. Lobbying

→§ 15-701. Generally

Registration required

(a) Unless exempted under subsection (b) of this section, an entity shall register with the Ethics Commission as provided in this subtitle, and shall be a "regulated lobbyist" for the purposes of this title, if, during a reporting period, the entity:

(1) for the purpose of influencing any legislative action or, as to the development or adoption of regulations or the development or issuance of an executive order, executive action:

(i)1. communicates with an official or employee of the Legislative Branch or Executive Branch in the presence of that official or employee; and

2. exclusive of the personal travel or subsistence expenses of the entity or a representative of the entity, incurs expenses of at least $500 or earns at least $2,500 as compensation for all such communication and activities relating to the communication during the reporting period; or

(ii)1. communicates with an official or employee of the Legislative Branch or Executive Branch; and

2. earns at least $5,000 as compensation for all such communication and activities relating to the communication during the reporting period;

(2) in connection with or for the purpose of influencing any executive action, spends a cumulative value of at least $100 for gifts, including meals, beverages, and special events, to one or more officials or employees of the Executive Branch;

(3) subject to subsection (b)(4) of this section, is compensated to influence executive action on a procurement contract that exceeds $100,000;

(4) subject to subsection (b)(5) of this section, is compensated by a business entity to influence executive action to secure from the State a business grant or loan with a value of more than $100,000 for the business entity;

(5) spends at least $2,000, including expenditures for salaries, contractual employees, postage, telecommunications services, electronic services, advertising, printing, and delivery services for the express purpose of soliciting others to communicate with an official to influence legislative action or executive action; or

(6) spends at least $2,500 to provide compensation to one or more entities required to register under this subsection.

Exempted activities

(b)(1) The following activities are exempt from regulation under this subtitle:

(i) appearances as part of the official duties of an elected or appointed official or employee of the State, a political subdivision of the State, or the United States, to the extent that the appearance is not on behalf of any other entity;

(ii) actions of a member of the news media, to the extent the actions are in the ordinary course of gathering and disseminating news or making editorial comment to the general public;

(iii) representation of a bona fide religious organization to the extent the representation is for the purpose of protecting the right of its members to practice the doctrine of the organization;

(iv) appearances as part of the official duties of an officer, director, member, or employee of an association engaged exclusively in representing counties or municipal corporations, to the extent that the appearance is not on behalf of any other entity; or

(v) actions as part of the official duties of a trustee, an administrator, or a faculty member of a nonprofit independent college or university in the State, provided the official duties of the individual do not consist primarily of attempting to influence legislative action or executive action.

(2) The following activities are exempt from regulation under this subtitle if the individual engages in no other acts during the reporting period that require registration:

(i) professional services in drafting bills or in advising clients on the construction or effect of proposed or pending legislation;

(ii) appearances before the entire General Assembly, or any committee or subcommittee of the General Assembly, at the specific request of the body involved;

(iii) appearances before a legislative committee at the specific request of a regulated lobbyist, if the witness notifies the committee that the witness is testifying at the request of the regulated lobbyist;

(iv) appearances before an executive unit at the specific request of the executive unit involved; or

(v) appearances before an executive unit at the specific request of a regulated lobbyist, if the witness notifies the executive unit that the witness is testifying at the request of the regulated lobbyist.

(3) An elementary, secondary, or postsecondary school student or student organization that communicates as part of a course or student activity is not subject to the registration requirements based on the expense threshold

under subsection (a)(1)(i) of this section.

(4) Subsection (a)(3) of this section does not apply to a bona fide salesperson or commercial selling agency employed or maintained by an employer for the purpose of soliciting or securing a procurement contract unless the person engages in acts during the reporting period that require registration under subsection (a)(1) or (2) of this section.

(5) If the person engages in no other acts during the reporting period that require registration, subsection (a)(4) of this section does not apply to:

(i) a bona fide full-time official or employee of a business entity seeking to secure a business grant or loan; or

(ii) a person who seeks to secure a business grant or loan for the purpose of locating, relocating, or expanding a business in or into the State.

Limited exemptions--employer of regulated lobbyist

(c)(1) Except for providing the authorization required by § 15-702 of this subtitle and the report required by § 15-704(d) of this subtitle, an entity that compensates one or more regulated lobbyists, and that reasonably believes that all expenditures requiring registration will be reported by the regulated lobbyist or lobbyists, is exempt from the registration and reporting requirements of this subtitle if the entity engages in no other act that requires registration.

(2) If a regulated lobbyist compensated by an entity that is exempt under paragraph (1) of this subsection fails to report the information required by this subtitle, the entity immediately shall become subject to the registration and reporting requirements of this subtitle.

West's Annotated Code of Maryland
State Government
Title 15. Public Ethics
Subtitle 8. Local Government Provisions
Part VI. Montgomery and Prince George's Counties--Special Provisions for Lobbying Disclosure

→§ 15-844. Definitions

In general

(a) In this Part VI the following words have the meanings indicated.

Candidate

(b) "Candidate" has the meaning stated in § 1-101 of the Election Law Article , but only as it applies to a candidate seeking election as a local official.

Contribution; political committee

(c) "Contribution" and "political committee" have the meanings stated in § 1-101 of the Election Law Article.

Lobbyist

(d) "Lobbyist" means a person required to register under § 2-295 of the Prince George's County Code or § 19A-21 of the Montgomery County Code.

Local official

(e) "Local official" means:

(1) a member of the County Council of Prince George's County or the County Executive of Prince George's County; or

(2) a member of the County Council of Montgomery County or the County Executive of Montgomery County.

West's Annotated Code of West Virginia
Chapter 6B. Public Officers and Employees; Ethics; Conflicts of Interest; Financial Disclosure
Article 2. West Virginia Ethics Commission; Powers and Duties; Disclosure of Financial Interest by Public Officials and Employees; Appearance Before Public Agencies; Code of Conduct for Administrative Law Judges

→§ 6B-2-5. Ethical standards for elected and appointed officials and public employees

(a) *Persons subject to section.* -- The provisions of this section apply to all elected and appointed public officials and public employees, whether full or part time, in state, county, municipal governments and their respective boards, agencies, departments and commissions and in any other regional or local governmental agency, including county school boards.

(b) *Use of public office for private gain.* -- (1) A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting in de minimis private gain does not constitute use of public office for private gain under this subsection. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

(2) Notwithstanding the general prohibition against use of office for private gain, public officials and public employees may use bonus points acquired through participation in frequent traveler programs while traveling on official government business: Provided, That the official's or employee's participation in such program, or acquisition of such points, does not result in additional costs to the government.

(3) The Legislature, in enacting this subsection, recognizes that there may be certain public officials or public employees who bring to their respective offices or employment their own unique personal prestige which is based upon their intelligence, education, experience, skills and abilities, or other personal gifts or traits. In many cases, these persons bring a personal prestige to their office or employment which inures to the benefit of the state and its citizens. Those persons may, in fact, be sought by the state to serve in their office or employment because, through their unusual gifts or traits, they bring stature and recognition to their office or employment and to the state itself. While the office or employment held or to be held by those persons may have its own inherent prestige, it would be unfair to those individuals and against the best interests of the citizens of this state to deny those persons the right to hold public office or to be publicly employed on the grounds that they would, in addition to the emoluments of their office or

employment, be in a position to benefit financially from the personal prestige which otherwise inheres to them. Accordingly, the commission is directed, by legislative rule, to establish categories of public officials and public employees, identifying them generally by the office or employment held, and offering persons who fit within those categories the opportunity to apply for an exemption from the application of the provisions of this subsection. Exemptions may be granted by the commission, on a case-by-case basis, when it is shown that: (A) The public office held or the public employment engaged in is not such that it would ordinarily be available or offered to a substantial number of the citizens of this state; (B) the office held or the employment engaged in is such that it normally or specifically requires a person who possesses personal prestige; and (C) the person's employment contract or letter of appointment provides or anticipates that the person will gain financially from activities which are not a part of his or her office or employment.

(c) *Gifts*. -- (1) A public official or public employee may not solicit any gift unless the solicitation is for a charitable purpose with no resulting direct pecuniary benefit conferred upon the official or employee or his or her immediate family: *Provided*, That no public official or public employee may solicit for a charitable purpose any gift from any person who is also an official or employee of the state and whose position is subordinate to the soliciting official or employee: *Provided, however*, That nothing herein shall prohibit a candidate for public office from soliciting a lawful political contribution. No official or employee may knowingly accept any gift, directly or indirectly, from a lobbyist or from any person whom the official or employee knows or has reason to know:

(A) Is doing or seeking to do business of any kind with his or her agency;

(B) Is engaged in activities which are regulated or controlled by his or her agency; or

(C) Has financial interests which may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of his or her official duties.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, a person who is a public official or public employee may accept a gift described in this subdivision, and there shall be a presumption that the receipt of such gift does not impair the impartiality and independent judgment of the person. This presumption may be rebutted only by direct objective evidence that the gift did impair the impartiality and independent judgment of the person or that the person knew or had reason to know that the gift was offered with the intent to impair his or her impartiality and independent judgment. The provisions of subdivision (1) of this subsection do not apply to:

(A) Meals and beverages;

(B) Ceremonial gifts or awards which have insignificant monetary value;

(C) Unsolicited gifts of nominal value or trivial items of informational value;

(D) Reasonable expenses for food, travel and lodging of the official or employee for a meeting at which the official or employee participates in a panel or has a speaking engagement;

(E) Gifts of tickets or free admission extended to a public official or public employee to attend charitable, cultural or political events, if the purpose of such gift or admission is a courtesy or ceremony customarily extended to the office;

(F) Gifts that are purely private and personal in nature; or

(G) Gifts from relatives by blood or marriage, or a member of the same household.

(3) The commission shall, through legislative rule promulgated pursuant to chapter twenty-nine-a of this code, establish guidelines for the acceptance of a reasonable honorarium by public officials and elected officials. The rule promulgated shall be consistent with this section. Any elected public official may accept an honorarium only when:

(A) That official is a part-time elected public official;

(B) The fee is not related to the official's public position or duties;

(C) The fee is for services provided by the public official that are related to the public official's regular, nonpublic trade, profession, occupation, hobby or avocation; and

(D) The honorarium is not provided in exchange for any promise or action on the part of the public official.

(4) Nothing in this section shall be construed so as to prohibit the giving of a lawful political contribution as defined by law.

(5) The Governor or his designee may, in the name of the State of West Virginia, accept and receive gifts from any public or private source. Any gift so obtained shall become the property of the state and shall, within thirty days of the receipt thereof, be registered with the commission and the Division of Culture and History.

(6) Upon prior approval of the Joint Committee on Government and Finance, any member of the Legislature may solicit donations for a regional or national legislative organization conference or other legislative organization function to be held in the state for the purpose of deferring costs to the state for hosting of the conference or function. Legislative organizations are bipartisan regional or national organizations in which the Joint Committee on Government and Finance authorizes payment of dues or other membership fees for the Legislature's

participation and which assist this and other state legislatures and their staff through any of the following:

(A) Advancing the effectiveness, independence and integrity of legislatures in the states of the United States;

(B) Fostering interstate cooperation and facilitating information exchange among state legislatures;

(C) Representing the states and their legislatures in the American federal system of government;

(D) Improving the operations and management of state legislatures and the effectiveness of legislators and legislative staff, and to encourage the practice of high standards of conduct by legislators and legislative staff;

(E) Promoting cooperation between state legislatures in the United States and legislatures in other countries.

The solicitations may only be made in writing. The legislative organization may act as fiscal agent for the conference and receive all donations. In the alternative, a bona fide banking institution may act as the fiscal agent. The official letterhead of the Legislature may not be used by the legislative member in conjunction with the fund raising or solicitation effort. The legislative organization for which solicitations are being made shall file with the Joint Committee on Government and Finance and with the Secretary of State for publication in the State Register as provided in article two of chapter twenty-nine-a of the code, copies of letters, brochures and other solicitation documents, along with a complete list of the names and last known addresses of all donors and the amount of donations received. Any solicitation by a legislative member shall contain the following disclaimer:

"This solicitation is endorsed by [name of member]. This endorsement does not imply support of the soliciting organization, nor of the sponsors who may respond to the solicitation. A copy of all solicitations are on file with the West Virginia Legislature's Joint Committee on Government and Finance, and with the Secretary of State and are available for public review."

(7) Upon written notice to the commission, any member of the Board of Public Works may solicit donations for a regional or national organization conference or other function related to the office of the member to be held in the state for the purpose of deferring costs to the state for hosting of the conference or function. The solicitations may only be made in writing. The organization may act as fiscal agent for the conference and receive all donations. In the alternative, a bona fide banking institution may act as the fiscal agent. The official letterhead of the office of the Board of Public Works member may not be used in conjunction with the fund raising or solicitation effort. The organization for which solicitations are being made shall file with the Joint Committee on Government and Finance, with the

Secretary of State for publication in the State Register as provided in article two of chapter twenty-nine-a of the code and with the commission, copies of letters, brochures and other solicitation documents, along with a complete list of the names and last known addresses of all donors and the amount of donations received. Any solicitation by a member of the Board of Public Works shall contain the following disclaimer: "This solicitation is endorsed by (name of member of Board of Public Works.) This endorsement does not imply support of the soliciting organization, nor of the sponsors who may respond to the solicitation. Copies of all solicitations are on file with the West Virginia Legislature's Joint Committee on Government and Finance, with the West Virginia Secretary of State and with the West Virginia Ethics Commission and are available for public review." Any moneys in excess of those donations needed for the conference or function shall be deposited in the Capitol Dome and Capitol Improvement Fund established in section two, article four of chapter five-a of this code.

(d) *Interests in public contracts.* --

(1) In addition to the provisions of section fifteen, article ten, chapter sixty-one of this code, no elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which the official or employee may have direct authority to enter into, or over which he or she may have control: *Provided*, That nothing herein

shall be construed to prevent or make unlawful the employment of any person with any governmental body: *Provided, however,* That nothing herein shall be construed to prohibit a member of the Legislature from entering into a contract with any governmental body, or prohibit a part-time appointed public official from entering into a contract which the part-time appointed public official may have direct authority to enter into or over which he or she may have control when the official has not participated in the review or evaluation thereof, has been recused from deciding or evaluating and has been excused from voting on the contract and has fully disclosed the extent of his or her interest in the contract.

(2) In the absence of bribery or a purpose to defraud, an elected or appointed public official or public employee or a member of his or her immediate family or a business with which he or she is associated shall not be considered as having a prohibited financial interest in a public contract when such a person has a limited interest as an owner, shareholder or creditor of the business which is awarded a public contract. A limited interest for the purposes of this subsection is:

(A) An interest which does not exceed one thousand dollars in the profits or benefits of the public contract or contracts in a calendar year;

(B) An interest as a creditor of a public employee or official who exercises control over the contract, or a member of his or her immediate family, if the amount is less than five thousand dollars.

(3) If a public official or employee has an interest in the profits or benefits of a contract, then he or she may not make, participate in making, or in any way attempt to use his office or employment to influence a government decision affecting his or her financial or limited financial interest. Public officials shall also comply with the voting rules prescribed in subsection (j) of this section.

(4) Where the provisions of subdivisions (1) and (2) of this subsection would result in the loss of a quorum in a public body or agency, in excessive cost, undue hardship, or other substantial interference with the operation of a state, county, municipality, county school board or other governmental agency, the affected governmental body or agency may make written application to the Ethics Commission for an exemption from subdivisions (1) and (2) of this subsection.

(e) *Confidential information.* -- No present or former public official or employee may knowingly and improperly disclose any confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests or the interests of another person.

(f) *Prohibited representation.* -- No present or former elected or appointed public official or public employee shall, during or after his or her public employment or service, represent a client or act in a representative capacity with or without compensation on behalf of any person in a contested case, rate-making proceeding, license or permit application, regulation filing or other particular matter involving a specific party or parties which arose during his or her period of public service or employment and in which he or she personally and substantially participated in a decision-making, advisory or staff support capacity, unless the appropriate government agency, after consultation, consents to such representation. A staff attorney, accountant or other professional employee who has represented a government agency in a particular matter shall not thereafter represent another client in the same or substantially related matter in which that client's interests are materially adverse to the interests of the government agency, without the consent of the government agency: *Provided*, That this prohibition on representation shall not apply when the client was not directly involved in the particular matter in which the professional employee represented the government agency, but was involved only as a member of a class. The provisions of this subsection shall not apply to legislators who were in office and legislative staff who were employed at the time it originally became effective on the first day of July, one thousand nine hundred eighty-nine, and those who have since become legislators or legislative staff and those who shall serve hereafter as legislators or legislative staff.

(g) *Limitation on practice before a board, agency, commission or department.* -- Except as otherwise provided in section three, four or five, article two, chapter eight-a of this code: (1) No elected or appointed public official and no full-time staff attorney or accountant shall, during his or her public service or public employment or for a period of one year after the termination of his or her public service or public employment with a governmental entity authorized to hear contested cases or promulgate or propose rules, appear in a representative capacity before the governmental entity in which he or she serves or served or is or was employed in the following matters:

(A) A contested case involving an administrative sanction, action or refusal to act;

(B) To support or oppose a proposed rule;

(C) To support or contest the issuance or denial of a license or permit;

(D) A rate-making proceeding; and

(E) To influence the expenditure of public funds.

(2) As used in this subsection, "represent" includes any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person: *Provided*, That nothing contained in this subsection shall prohibit, during any period, a former public official or employee from being retained by or employed to represent, assist or act in a representative capacity on behalf of the public agency by which he or she was employed or in which he or she served. Nothing in this subsection shall be construed to prevent a

former public official or employee from representing another state, county, municipal or other governmental entity before the governmental entity in which he or she served or was employed within one year after the termination of his or her employment or service in the entity.

(3) A present or former public official or employee may appear at any time in a representative capacity before the Legislature, a county commission, city or town council or county school board in relation to the consideration of a statute, budget, ordinance, rule, resolution or enactment.

(4) Members and former members of the Legislature and professional employees and former professional employees of the Legislature shall be permitted to appear in a representative capacity on behalf of clients before any governmental agency of the state or of county or municipal governments, including county school boards.

(5) An elected or appointed public official, full-time staff attorney or accountant who would be adversely affected by the provisions of this subsection may apply to the Ethics Commission for an exemption from the one year prohibition against appearing in a representative capacity, when the person's education and experience is such that the prohibition would, for all practical purposes, deprive the person of the ability to earn a livelihood in this state outside of the governmental agency. The Ethics Commission shall by legislative rule establish general guidelines or standards for granting an exemption or reducing the

time period, but shall decide each application on a case-by-case basis.

(h) *Employment by regulated persons and vendors.* -- (1) No full-time official or full-time public employee may seek employment with, be employed by, or seek to purchase, sell or lease real or personal property to or from any person who:

(A) Had a matter on which he or she took, or a subordinate is known to have taken, regulatory action within the preceding twelve months; or

(B) Has a matter before the agency on which he or she is working or a subordinate is known by him or her to be working.

(C) Is a vendor to the agency where the official serves or public employee is employed and the official or public employee, or a subordinate of the official or public employee, exercises authority or control over a public contract with such vendor, including, but not limited to:

(i) Drafting bid specifications or requests for proposals;

(ii) Recommending selection of the vendor;

(iii) Conducting inspections or investigations;

(iv) Approving the method or manner of payment to the vendor;

(v) Providing legal or technical guidance on the formation, implementation or execution of the contract; or

(vi) Taking other nonministerial action which may affect the financial interests of the vendor.

(2) Within the meaning of this section, the term "employment" includes professional services and other services rendered by the public official or public employee, whether rendered as employee or as an independent contractor; "seek employment" includes responding to unsolicited offers of employment as well as any direct or indirect contact with a potential employer relating to the availability or conditions of employment in furtherance of obtaining employment; and "subordinate" includes only those agency personnel over whom the public official or public employee has supervisory responsibility.

(3) A full-time public official or full-time public employee who would be adversely affected by the provisions of this subsection may apply to the Ethics Commission for an exemption from the prohibition contained in subdivision (1) of this subsection.

(A) The Ethics Commission shall by legislative rule establish general guidelines or standards for granting an exemption, but shall decide each application on a case-by-case basis;

(B) A person adversely affected by the restriction on the purchase of personal property may make such purchase after seeking and obtaining approval from the commission or in good faith reliance upon an official guideline promulgated by the commission, written advisory opinions issued by the commission, or a legislative rule.

(C) The commission may establish exceptions to the personal property purchase restrictions through the adoption of guidelines, advisory opinions or legislative rule.

(4) A full-time public official or full-time public employee may not take personal regulatory action on a matter affecting a person by whom he or she is employed or with whom he or she is seeking employment or has an agreement concerning future employment.

(5) A full-time public official or full-time public employee may not personally participate in a decision, approval, disapproval, recommendation, rendering advice, investigation, inspection or other substantial exercise of nonministerial administrative discretion involving a vendor with whom he or she is seeking employment or has an agreement concerning future employment.

(6) A full-time public official or full-time public employee may not receive private compensation for providing information or services that he or she is required to provide in carrying out his or her public job responsibilities.

(i) *Members of the Legislature required to vote. --*

Members of the Legislature who have asked to be excused from voting or who have made inquiry as to whether they should be excused from voting on a particular matter and who are required by the presiding officer of the House of Delegates or Senate of West Virginia to vote under the rules of the particular house shall not be guilty of any violation of ethics under the provisions of this section for a vote so cast.

(j) *Limitations on Voting.*

(1) Public officials, excluding members of the Legislature who are governed by subsection (i) of this section, may not vote on a matter:

(A) In which they, an immediate family member, or a business with which they or an immediate family member is associated have a financial interest. Business with which they are associated means a business of which the person or an immediate family member is a director, officer, owner, employee, compensated agent, or holder of stock which constitutes five percent or more of the total outstanding stocks of any class.

(B) If a public official is employed by a financial institution and his or her primary responsibilities include consumer and commercial lending, the public official may not vote on a matter which directly affects the financial interests of a customer of the financial institution if the public official is directly involved in approving a loan request from the person or business appearing before the governmental body or if the public official has been directly involved in approving a loan for that person or business within the past 12 months: *Provided*, That this limitation only applies if the total amount of the loan or loans exceeds fifteen thousand dollars.

(C) A personnel matter involving the public official's spouse or relative;

(D) The appropriations of public moneys or the awarding of a contract to a nonprofit corporation if the public official or an immediate family member is employed by the nonprofit.

(II) A public official may vote:

(A) If the public official, his or her spouse, immediate family members or relatives or business with which they are associated are affected as a member of, and to no greater extent than any other member of a profession, occupation, class of persons or class of businesses. A class shall consist of not fewer than five similarly situated persons or businesses; or

(B) If the matter affects a publicly traded company when:

(i) The public official, or dependent family members individually or jointly own less than five percent of the issued stock in the publicly traded company and the value of the stocks individually or jointly owned is less than ten thousand dollars; and

(ii) Prior to casting a vote the public official discloses his or her interest in the publicly traded company.

(3) For a public official's recusal to be effective, it is necessary to excuse him or herself from participating in the discussion and decision-making process by physically removing him or herself from the room during the period, fully disclosing his or her interests, and recusing him or herself from voting on the issue.

(k) *Limitations on participation in licensing and rate-making proceedings.* -- No public official or employee may participate within the scope of his or her duties as a public official or employee, except through ministerial functions as defined in section three, article one of this chapter, in any license or rate-making proceeding that directly affects the license or rates of any person, partnership, trust, business trust, corporation or association in which the public official or employee or his or her immediate family owns or controls more than ten percent. No public official or public employee may participate within the scope of his or her duties as a public official or public employee, except through ministerial functions as defined in section three, article one of this chapter, in any license or rate-making proceeding that directly affects the license or rates of any person to whom the public official or public employee or his or her immediate family, or a partnership, trust, business trust, corporation or association of which the public official or employee, or his or her immediate family, owns or controls more than ten percent, has sold goods or services totaling more than one thousand dollars during the preceding year, unless the public official or public employee has filed a written statement acknowledging such sale with the public agency and the statement is entered in any public record of the agency's proceedings. This subsection shall not be construed to require the disclosure of clients of attorneys or of patients or clients of persons licensed pursuant to article three, eight, fourteen, fourteen-a, fifteen, sixteen, twenty, twenty-one or thirty-one, chapter thirty of this code.

(l) *Certain compensation prohibited.* -- (1) A public employee may not receive additional compensation from another publicly-funded state, county or municipal office or employment for working the same hours, unless:

(A) The public employee's compensation from one public employer is reduced by the amount of compensation received from the other public employer;

(B) The public employee's compensation from one public employer is reduced on a pro rata basis for any work time missed to perform duties for the other public employer;

(C) The public employee uses earned paid vacation, personal or compensatory time or takes unpaid leave from his or her public employment to perform the duties of another public office or employment; or

(D) A part-time public employee who does not have regularly scheduled work hours or a public employee who is authorized by one public employer to make up, outside of regularly scheduled work hours, time missed to perform the duties of another public office or employment maintains time records, verified by the public employee and his or her immediate supervisor at least once every pay period, showing the hours that the public employee did, in fact, work for each public employer. The public employer shall submit these time records to the Ethics Commission on a quarterly basis.

(2) This section does not prohibit a retired public official or public employee from receiving compensation from a publicly-funded office or employment in addition to any retirement benefits to which the retired public official or public employee is entitled.

(m) *Certain expenses prohibited.* -- No public official or public employee shall knowingly request or accept from any governmental entity compensation or reimbursement for any expenses actually paid by a lobbyist and required by the provisions of this chapter to be reported, or actually paid by any other person.

(n) Any person who is employed as a member of the faculty or staff of a public institution of higher education and who is engaged in teaching, research, consulting or publication activities in his or her field of expertise with public or private entities and thereby derives private benefits from such activities shall be exempt from the prohibitions contained in subsections (b), (c) and (d) of this section when the activity is approved as a part of an employment contract with the governing board of the institution or has been approved by the employee's department supervisor or the president of the institution by which the faculty or staff member is employed.

(o) Except as provided in this section, a person who is a public official or public employee may not solicit private business from a subordinate public official or public employee whom he or she has the authority to direct, supervise or control. A person who is a public official or public employee may solicit private business from a subordinate public official or public employee whom he or she has the authority to direct, supervise or control when:

(A) The solicitation is a general solicitation directed to the public at large through the mailing or other means of distribution of a letter, pamphlet, handbill, circular or other written or printed media; or

(B) The solicitation is limited to the posting of a notice in a communal work area; or

(C) The solicitation is for the sale of property of a kind that the person is not regularly engaged in selling; or

(D) The solicitation is made at the location of a private business owned or operated by the person to which the subordinate public official or public employee has come on his or her own initiative.

(p) The commission may, by legislative rule promulgated in accordance with chapter twenty-nine-a of this code, define further exemptions from this section as necessary or appropriate.

West's Annotated Code of West Virginia
Chapter 6B. Public Officers and Employees; Ethics; Conflicts of Interest; Financial Disclosure
Article 3. Lobbyists

→§ 6B-3-1. Definitions

As used in this article, unless the context in which used clearly indicates otherwise:

(1) "Compensation" means money or any other thing of value received or to be received by a lobbyist from an employer for services rendered.

(2) "Employer" or "lobbyist's employer" means any person who employs or retains a lobbyist.

(3) "Expenditure" means payment, distribution, loan, advance deposit, reimbursement, or gift of money, real or personal property or any other thing of value; or a contract, promise or agreement, whether or not legally enforceable.

(4) "Government officer or employee" means a member of the Legislature, a legislative employee, the Governor and other members of the Board of Public Works, heads of executive departments and any other public officer or public employee under the legislative or executive branch of state government who is empowered or authorized to make policy and perform nonministerial functions. In the case of elected offices included herein, the term "government officer or employee" includes candidates who have been elected but who have not yet assumed office.

(5) "Legislation" means bills, resolutions, motions, amendments, nominations and other matters pending or proposed in either house of the Legislature and includes any other matters that may be the subject of action by either house or any committee of the Legislature and all bills or resolutions that, having passed both houses, are pending approval or veto by the Governor.

(6) "Lobbying" or "lobbying activity" means the act of communicating with a government officer or employee to promote, advocate or oppose or otherwise attempt to influence:

(i) The passage or defeat or the executive approval or veto of any legislation which may be considered by the Legislature of this state; or

(ii) The adoption or rejection of any rule, regulation, legislative rule, standard, rate, fee or other delegated legislative or quasilegislative action to be taken or withheld by any executive department.

(7) "Lobbying firm" means any business entity, including an individual contract lobbyist, which meets either of the following criteria:

(A) The business entity receives or becomes entitled to receive any compensation, other than reimbursement for reasonable travel expenses, for the purpose of lobbying on behalf of any other person, and any partner, owner, officer or employee of the business entity.

(B) The business entity receives or becomes entitled to receive any compensation, other than reimbursement for reasonable travel expenses, to communicate directly with any elected state official, agency official or legislative official for the purpose of lobbying on behalf of any other person.

(8)(A) "Lobbyist" means any individual employed by a lobbying firm or who is otherwise employed or contracts for economic consideration, other than reimbursement for reasonable travel expenses, to communicate directly or through his or her agents with any elective state official, agency official or legislative official for the purpose of promoting, advocating, opposing or otherwise attempting to influence:

(i) The passage or defeat or the executive approval or veto of any legislation which may be considered by the Legislature of this state; or

(ii) The adoption or rejection of any rule, legislative rule, standard, rate, fee or other delegated legislative or quasilegislative action to be taken or withheld by any executive department.

(B) The term "lobbyist" does not include the following persons, who are exempt from the registration and reporting requirements set forth in this article, unless they engage in activities which would otherwise subject them to the registration and reporting requirements:

(i) Persons who limit their lobbying activities to appearing before public sessions of committees of the Legislature, or public hearings of state agencies, are exempt.

(ii) Persons who limit their lobbying activities to attending receptions, dinners, parties or other group functions and make no expenditure in connection with such lobbying are exempt.

(iii) Persons who engage in news or feature reporting activities and editorial comment as working members of the press, radio or television and persons who publish or disseminate such news, features or editorial comment through a newspaper, book, regularly published periodical, radio station or television station are exempt.

(iv) Persons who lobby without compensation or other consideration, other than reimbursement for reasonable travel expenses, for acting as lobbyists, who are not employed by a lobbying firm or lobbyist employer, and whose total expenditures in connection with lobbying activities do not exceed one hundred fifty dollars during any calendar year, are exempt. The exemptions contained in this subparagraph and in subparagraph (ii) are intended to permit and encourage citizens of this state to exercise their constitutional rights to assemble in a peaceable manner, consult for the common good, instruct their representatives, and apply for a redress of grievances. Accordingly, such persons may lobby without incurring any registration or reporting obligation under this article. Any person exempt under this subparagraph or subparagraph (ii) may at his or her option register and report under this article.

(v) Persons who lobby on behalf of a nonprofit organization with regard to legislation, without compensation, and who restrict their lobbying activities to no more than twenty days or parts thereof during any regular session of the Legislature, are exempt. The Commission may promulgate a legislative rule to require registration and reporting by persons who would otherwise be exempt under this subparagraph, if it determines that such rule is necessary to prevent frustration of the purposes of this article. Any person exempt under this subparagraph may, at his or her option, register and report under this article.

(vi) The Governor, members of the Governor's staff, members of the Board of Public Works, officers and employees of the executive branch who communicate with a member of the Legislature on the request of that member, or who communicate with the Legislature, through the proper official channels, requests for legislative action or appropriations which are deemed necessary for the efficient conduct of the public business or which are made in the proper performance of their official duties, are exempt.

(vii) Members of the Legislature are exempt.

(viii) Persons employed by the Legislature for the purpose of aiding in the preparation or enactment of legislation or the performance of legislative duties are exempt.

(ix) Persons rendering professional services in drafting proposed legislation or in advising or rendering opinions to clients as to the construction and effect of proposed or pending legislation are exempt.

(9) "Person" means any individual, partnership, trust, estate, business trust, association or corporation; any department, commission, board, publicly supported college or university, division, institution, bureau or any other instrumentality of the state; or any county, municipal corporation, school district or any other political subdivision of the state.

Excerpt of Appellants' Reply Brief

E. The Restrictions are Discriminatory in Violation of Article I, section 8 and the First Amendment.

Discrimination among speakers, as detailed above, violates Article I, section 8. *See Tidyman*, 306 Or at 182 ("[T]he obstacle to the city's distinction is not the constitutional guarantee of equal privileges and immunities, Article I, section 20, but the guarantee of free expression, Article I, section 8."). Contrary to the state's interpretation, the decision in *Outdoor Media*, invalidating a distinction between on-premises and off-premises signs, reinforces the rule that discriminating among speakers violates Article I, section 8. Under the invalidated rule, whether a sign was allowed turned on both the text of the sign *and* the identity of the speaker. Thus, the Court suggested that the same text, "Pray for Peace," that would be disallowed elsewhere would be allowed if displayed on the property of a church, because it would then inform the public about on-premises activities. *Outdoor Media*, 340 Or at 293. Although effects on signs with different text were sufficient to invalidate the act, the Court's discussion illustrates a commitment to the Article I, section 8, prohibition on discrimination against speakers.

Discrimination against speakers similarly violates the First Amendment. *See First National Bank of Boston v. Bellotti*, 435 US 765, 777, 98 S Ct 1407, 55 L Ed 2d 707 (1978) ("The inherent worth of the speech in terms of its capacity for informing the public does not depend upon the identity of its source, whether corporation, association, union, or individual."); *Sanjour v. EPA*, 56 F3d 85, 96-97 (DC Cir 1995) (invalidating, under First Amendment, restrictions on honoraria for EPA employees speaking in unofficial capacities that, while ostensibly aimed at private enrichment, effectively burdened content of speech). Because the protections of Article I, section 8, are recognized as broader than those of the First Amendment, such discrimination surely violates Article I, section 8, as well.

Excerpt of Appellants' Opening Brief

2. The discriminatory classifications violate the First Amendment.

Plaintiffs also challenge the gift and entertainment restrictions under the First Amendment, not because the First Amendment is necessarily more protective than Article I, section 8, but because the First Amendment case law on discriminatory restrictions is more developed and structured. Whether as a helpful guide in interpreting the (presumably enhanced) protections of Article I, section 8, or as an independent basis for plaintiffs' challenge, the case law under the First Amendment makes plain that the discriminatory gift and entertainment provisions cannot survive constitutional scrutiny.

In deciding that the gift and entertainment restrictions did not violate plaintiffs' right under the First Amendment, the trial court relied upon its finding that the restrictions "advance the State's interest in safeguarding the public confidence in the State's electoral and other public processes." ER 22. For the reasons that follow, plaintiffs submit that the trial court has not identified a sufficient basis for the discriminatory restrictions, nor has there been any sufficient showing that the restrictions are necessary (or reasonably calculated) to accomplish the identified governmental interests.

The United States Supreme Court has repeatedly stated that "[l]aws designed or intended to suppress or restrict the expression of specific speakers contradict First Amendment principles." *United States v. Playboy Entertainment Group*, 529 US 803, 812, 120 S Ct 1878 (2000)(applying strict scrutiny and striking down a regulation applicable only to television channels "primarily dedicated to sexually-oriented programming"); *see also First National Bank of Boston v. Bellotti*, 435 US 765, 785-86, 98 S Ct 1407 (1978)("In the realm of protected speech, the legislature is constitutionally disqualified from dictating * * * the speakers who may address a public issue"). Moreover, the Supreme Court instructs that where the "legislature's suppression of speech suggests an attempt to give one side of a debatable public question an advantage in expressing its views to the people, the First Amendment is plainly offended." *Id.* at 785-86.

The Ninth Circuit case of *Service Employees International v. Fair Political Practices Commission*, 955 F2d 1312 (9th Cir 1992), provides compelling authority and a useful summary of Supreme Court case law. In the *Service Employees* case, plaintiffs challenged a campaign finance restriction that was found to discriminate against challengers and in favor of incumbents. The court first noted that "the government must remain scrupulously neutral when regulating expressive activities protected by the First Amendment." *Id.* at 1319. The court then stated that a "line of [United States] Supreme Court cases * * * firmly establishes the principle that discrimination is permissible in the First Amendment context only when the discrimination is itself necessary to achieve a substantial governmental interest." *Id* (citations omitted). For instance, in Police Dept. of Chicago v. Mosley, 408 US 92, 92 S Ct 2286 (1972), the Court struck down an ordinance that prohibited all picketing on school grounds except for labor picketing. The Court stated that the "crucial question is whether there is an appropriate governmental interest suitably furthered by the differential treatment." *Id*. at 95. Finding that there was no showing that non-labor picketing was "clearly more disruptive" than labor picketing, the Court held the restriction unconstitutional. *Id*. at 100. That is, even though a general prohibition on all picketing on school grounds might well have been permissible, the discriminatory prohibition was not sufficiently justified to survive First Amendment scrutiny.

The defendants in *Service Employees* attempted to justify the discriminatory campaign finance regulation with the same rationale advanced by defendants in this appeal: preventing corruption and the appearance of corruption. 955 F2d at 1321. The court, however, ruled that –whatever the merit of such governmental interest in connection with evenhanded restrictions – preventing corruption and the appearance thereof did not justify a restriction that discriminated among different speakers. *Id*. ("we recognize that the state has a legitimate interest in preventing corruption and the appearance of corruption, but hold that this interest will not support a discriminatory formula for limiting contributions").[12]

Similarly, in this case, defendants cannot justify the discriminatory gift and entertainment restrictions based on the interest of preventing corruption or the appearance thereof. Assuming for the sake of argument that defendants could somehow show that gifts of $51 and entertainment of $1 create an appearance of impropriety on the part of legislators and therefore constitute a substantial or compelling state interest under the First Amendment, there is simply no basis whatever for only restricting such expenditures by some persons and allowing other persons to make unlimited gift and entertainment expenditures. That is, the government has not shown and cannot show that a gift of $51 or entertainment of $1 from a person with an "economic interest" (*e.g.*, a member of a regulated industry) is clearly more deleterious than a $1 million gift (or entertainment) from a person whose interest in pending legislative is not "economic" (as defined), such as an environmental organization, a political organization, or some other group that is similarly motivated to influence public officials. As between the two examples, it is clear that the only expenditure that could conceivable create the "appearance of impropriety" would be the unlimited gifts from those persons not regulated by the gift and entertainment restrictions.

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[12] The intent of the state in preventing corruption or the appearance thereof is applicable in a First Amendment analysis but has no relevance in an analysis under Article I, section 8, of the Oregon Constitution.

The same result obtains in connection with the gift distinction that is based on whether the speaker is a favored person (a governmental entity, a Native American tribe, an organization with a public body among its membership, or a non-profit receiving less than 5% of its funds from for-profit entities) as opposed to a disfavored person (a for-profit entity or a non-profit receiving more than 5% of its funds from for-profit entities). The U. S. Supreme Court has held that corporate speech shares in First Amendment protections and that the "inherent worth of the speech in terms of its capacity for informing the public does not depend upon the identity of its source, whether corporation, association, union, or individual." *Bellotti*, 435 US at 777. Moreover, a restriction in favor of government entities must also be subjected to the same rigorous scrutiny as other discriminatory restrictions on expression. *See, e.g., Nat. Ass'n of Social Workers v. Harwood*, 874 F Supp 530, 541-542 (D.C. R.I. 1995), *rev'd on other grounds*, 69 F3d 622 (1st Cir 1995) (restriction allowing certain lobbying by governmental, but not private, lobbyists found to be an unconstitutional, where discrimination was "not narrowly drawn to effectuate a compelling government interest").

Not only are the discriminatory restrictions not supported by any sufficiently important governmental interest, there can be no showing that the discrimination among speakers is necessary or reasonable to achieve the purported interests. In enacting ORS 244.025, the State of Oregon has, despite its obligation under the First Amendment to remain "scrupulously neutral" in regulating expressive conduct, improperly favored some political advocates over others. The gift and entertainment restrictions are, therefore, unconstitutional under the First Amendment.

Excerpt of Plaintiffs' Motion for Summary Judgment

IV. The gift and entertainment restrictions impermissibly discriminate among speakers and, therefore, are unconstitutional under Article I, section 8, and the First Amendment.

As shown above, the gift and entertainment restrictions do not apply evenhandedly to all. That is, although the restrictions of ORS 244.025 restrict the expression by plaintiffs and others similarly situated, other persons lobbying the legislature are allowed to make unlimited gifts and entertainment expenditures. These persons enjoying unfettered speech rights include persons without a defined "economic interest" and (for limited types of expenditures) certain non-profit organizations that receive less than 5% of their funding from for-profit organizations. Neither the state nor the federal constitution allows the state to engage in such disparate treatment of speakers, particularly speakers engaged in core political speech.

Oregon courts have stated that the free expression guarantee of Article I, section 8, (and not the guarantee of equal privileges and immunities under Article I, section 20) is the major obstacle to restrictions that discriminate among different speakers and types of speech. *City of Portland v. Tidyman,* 306 Or. 174, 182, 759 P.2d 242 (1988)(striking ordinance imposing restrictions on adult bookstores and theaters). In *Ackerly Communications v. Multnomah County,* 72 Or.App

617, 696 P.2d 1140 (1985), for example, the court found that a county ordinance that regulated "commercial" billboards, but left "noncommercial billboards" exempt from regulation, violated Article I, section 8. The court in *Ackerly* held that "an ordinance that imposes a regulation on one kind of nonabusive speech and no regulation on others, because of the difference in their content, is inconsistent with Article I, section 8." *Id.* at 623-24. That is, Article I, section 8, precludes "any value-based distinctions between different kinds of nonabusive speech." *Id.* at p. 624, n. 5 (citing *State v. Harrington,* 67 Or.App 608, 680 P.2d 666 (1984)).

The very recent case of *Outdoor Media v. Dept. of Transportation*, 340 Or. 275, 132 P.3d 5 (2006), provides additional support for plaintiffs' position. In *Outdoor Media*, the plaintiff challenged the state's billboard restriction that required permits for billboards related to off-premises activities (e.g., "Eat at Joe's: 10 Miles Ahead") but not for billboards related to on-premises activities (e.g. "Gas for Sale"). 340 Or. at 292-293. The state argued that the "on-premises/off-premises distinction is a content- and viewpoint-neutral regulation" but the court disagreed. *Id.* at 296. "That distinction allows a sign owner without a permit to display one narrowly defined category of message – a message related to activity conducted on the premises where the sign is located – but not to display any message respecting any" off-premises activities. *Id.* Similarly, in this case, the gift and entertainment restrictions allow a person to engage in political speech regarding certain matters pending before a public official (i.e.

matters in which the person does not have a defined "economic interest") but prohibits the person from engaging in other types of political speech involving matters in which the person does have an economic interest. This restriction on core political speech is every bit as offensive to the free expression guarantee of Article I, section 8, as the restriction imposed upon off-premises billboards in *Outdoor Media*.

The gift and entertainment restrictions imposed by ORS 244.025 represent precisely the type of discriminatory speech restriction that Article I, section 8, forbids. Just as the distinction between commercial and noncommercial billboards cannot survive scrutiny, the lobbying restrictions that apply only against certain political speakers (e.g. those with an "economic interest" or for-profit entities) improperly favor one type of speech, and one type of speaker, over another. The lobbying restrictions are similar to the "classification restriction among users of telemarketing equipment (distinguishing between charitable and political entities, on the one hand, and all others)" that were struck down in *Moser v. Frohnmayer*, 315 Or. 372, 845 P.2d 1284 (1993).[3] ****[3] Under Article I, section 8, jurisprudence, the state may not impose discriminatory restrictions on constitutionally protected expression. Accordingly, the gift and entertainment restrictions, for this reason, are unconstitutional under Article I, section 8.

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[3] The Court of Appeals in *Moser* held that because the statute at issue "regulates commercial speech differently from other subjects of speech, it is unconstitutional." 112 Or.App 226, 233, 829 P.2d 84 (1992). The Oregon Supreme Court affirmed the Court of Appeals, relying on a more traditional *State v. Robertson* analysis. 315 Or. at 379-380.

Plaintiffs also challenge the gift and entertainment restrictions under the First Amendment, not because the First Amendment is necessarily more protective than Article I, section 8, but because the First Amendment case law on discriminatory restrictions is more developed and structured. Whether as a helpful guide in interpreting the (presumably enhanced) protections of Article I, section 8, or as an independent basis for plaintiffs' challenge, the case law under the First Amendment makes plain that the discriminatory gift and entertainment provisions cannot survive constitutional scrutiny.

The United States Supreme Court has repeatedly stated that "[l]aws designed or intended to suppress or restrict the expression of specific speakers contradict First Amendment principles." *United States v. Playboy Entertainment Group,* 529 U.S. 803, 812, 120 S.Ct 1878 (2000)(applying strict scrutiny and striking down a regulation applicable only to television channels "primarily dedicated to sexually-oriented programming"); *see also First National Bank of Boston v. Bellotti,* 435 U.S. 765, 785-86, 98 S.Ct 1407 (1978)("In the realm of protected speech, the legislature is constitutionally disqualified from dictating * * * the speakers who may address a public issue"). Moreover, the Supreme Court instructs that where the "legislature's suppression of speech suggests an attempt to give one side of a debatable public question an advantage in expressing its views to the people, the First Amendment is plainly offended." *Id.* at 785-86.

The Ninth Circuit case of *Service Employees International v. Fair Political Practices Commission,* 955 F.2d 1312 (9th Cir. 1992), provides compelling authority and a useful summary of Supreme Court case law. In the *Service Employees* case, plaintiffs challenged a campaign finance restriction that was found to discriminate against challengers and in favor of incumbents. The court first noted that "the government must remain scrupulously neutral when regulating expressive activities protected by the First Amendment." *Id.* at 1319. The court then stated that a "line of [United States] Supreme Court cases * * * firmly establishes the principle that discrimination is permissible in the First Amendment context only when the discrimination is itself necessary to achieve a substantial governmental interest." *Id* (citations omitted). For instance, in *Police Dept. of Chicago v. Mosley,* 408 U.S. 92, 92 S.Ct 2286 (1972), the Court struck down an ordinance that prohibited all picketing on school grounds except for labor picketing. The Court stated that the "crucial question is whether there is an appropriate governmental interest suitably furthered by the differential treatment." *Id.* at 95. Finding that there was no showing that non-labor picketing was "clearly more disruptive" than labor picketing, the Court held the restriction unconstitutional. *Id.* at 100. That is, even though a general prohibition on all picketing on school grounds might well have been permissible, the discriminatory prohibition was not sufficiently justified to survive First Amendment scrutiny.

The defendants in *Service Employees* attempted to justify the discriminatory campaign finance regulation with the same rationale advanced by defendants in the instant case: preventing corruption and the appearance of corruption. 955 F.2d at 1321. The court, however, ruled that – whatever the merit of such governmental interest in connection with evenhanded restrictions – preventing corruption and the appearance thereof did not justify a restriction that discriminated among different speakers. *Id* ("we recognize that the state has a legitimate interest in preventing corruption and the appearance of corruption, but hold that this interest will not support a discriminatory formula for limiting contributions").

Similarly, in this case, defendants cannot justify the discriminatory gift and entertainment restrictions based on the interest of preventing corruption or the appearance thereof. Assuming for the sake of argument that defendants could somehow show that gifts of $51 and entertainment of $1 create an appearance of impropriety on the part of legislators and therefore constitute a substantial or compelling state interest under the First Amendment, there is simply no basis whatever for only restricting such expenditures by some persons and allowing other persons to make unlimited gift and entertainment expenditures. That is, the government has not shown and cannot show that a gift of $51 or entertainment of $1 from a person with an "economic interest" (e.g., a member of a regulated industry) is clearly more deleterious than a $1 million gift (or entertainment) from a person whose interest in pending legislative is not "economic" (as defined), such as an environmental organization, a political organization, or some other group that is similarly motivated to influence public officials. As between the two examples, it is clear that the only expenditure that could conceivable create the "appearance of impropriety" would be the unlimited gifts from those persons not regulated by the gift and entertainment restrictions.

The same result obtains in connection with the gift distinction that is based on whether the speaker is a favored person (a governmental entity, a Native American tribe, an organization with a public body among its membership, or a non-profit receiving less than 5% of its funds from for-profit entities) as opposed to a disfavored person (a for-profit entity or a non-profit receiving more than 5% of its funds from for-profit entities). The U. S. Supreme Court has held that corporate speech shares in First Amendment protections and that the "inherent worth of the speech in terms of its capacity for informing the public does not depend upon the identity of its source, whether corporation, association, union, or individual." *Bellotti,* 435 U.S. at 777. Moreover, a restriction in favor of government entities must also be subjected to the same rigorous scrutiny as other discriminatory restrictions on expression. *See, e.g., Nat. Ass'n of Social Workers v. Harwood,* 874 F.Supp 530, 541-542

(D.C. R.I. 1995)(restriction allowing certain lobbying by governmental, but not private, lobbyists found to be an unconstitutional, where discrimination was "not narrowly drawn to effectuate a compelling government interest"). Defendants in this case cannot show that the discrimination among speakers is necessary to achieve the interests that defendants believe underlie the lobbying restrictions.

In light of the foregoing, the discriminatory gift and entertainment restrictions are unconstitutional, whether under the outright prohibition on discriminatory speech restrictions under Article I, section 8, or under the rigorous test for such regulations under the First Amendment. Even if the state were constitutionally permitted to impose the severe gift and entertainment restrictions of ORS 244.025, it may not do so in the discriminatory manner the state has chosen, where such restrictions are imposed upon only some persons and not others.

IN THE CIRCUIT COURT OF THE STATE OF
OREGON
FOR THE COUNTY OF MARION

Case No. 07C-20464

FRED VANNATTA AND CENTER TO PROTECT
FREE SPEECH, INC., an Oregon Not-For-Profit
Corporation,
Plaintiffs,

v.

OREGON GOVERNMENT ETHICS COMMISSION,
formerly known as the Oregon Government
Standards and Practices Commission, and STATE
OF OREGON,
Defendants.

SECOND AMENDED COMPLAINT

(Declaratory Judgment; Injunction; Attorney Fees)

For their complaint, plaintiffs allege:

DECLARATORY RELIEF

1.

The Center to Protect Free Speech, Inc. ("Center"), is an Oregon not-for-profit corporation, exempt from taxation under section 501(c)(4) of the Internal Revenue Code. The Center is dedicated to protecting rights guaranteed by the state and federal constitutions, including the rights to speak freely on any subject whatever, to instruct representatives, and to apply to the Legislative Assembly for redress of grievances. Fred VanNatta ("VanNatta") is an elector and taxpayer and the president of the Center. VanNatta exercises the constitutional rights to speak freely on any subject whatever, to instruct representatives, and to apply to the Legislative Assembly for redress of grievances.

2.

The State of Oregon has adopted a Code of Ethics in ORS Ch. 244. The Oregon Government Ethics Commission ("Commission") is the agency of the State of Oregon charged by law with implementing and enforcing the Code of Ethics for public officials, including ORS chapter 244 as amended by 2007 SB 10, Ch. 877 Or. Laws 2007. It was formerly known as the Oregon Government Standards and Practices Commission. A copy of Enrolled SB 10, which the Commission is charged with enforcing, is attached hereto as Exhibit 1.

3.

VanNatta has registered to lobby on behalf of the Center to, among other things, request a repeal during the Special Legislative Session scheduled in February 2008 of many of the provisions of SB 10 which this action addresses. A copy of VanNatta's lobby registration is attached as Exhibit 2. To further that goal, the Center and VanNatta plan to engage in conduct that would be prohibited and penalized if the Commission were to implement and enforce the code of ethics as amended by 2007 SB 10. VanNatta is also registered to lobby on behalf of the

Roman V Ranch, LLC and other clients. He is the Managing Member of the Roman V Ranch, LLC which owns small woodlands. The Legislative Assembly has and is expected to consider legislative proposals which will impact the economic interests of small woodland owners including VanNatta and Roman V Ranch, LLC. Conduct in which VanNatta would engage includes obtaining the good will of public officials and candidates for public office through offering and providing public officials, their families and candidates for public office entertainment, business meals with an aggregate value of more than $50 in a calendar year in connection with their discussions, and honorariums in connection with official duties. This conduct would also be penalized if the Commission were to implement and enforce the Code of Ethics as amended by 2007 SB 10.

4.

Sections 18(1), (2), and (3) of 2007 SB 10, which prohibit a person with a legislative or administrative interest from offering or giving such gifts with an aggregate value of more than $50 in a calendar year to a public official or candidate for public office, violate:

i. Article I, section 8 of the Oregon Constitution and the First Amendment to the United States Constitution, because sections 18(1), (2), and (3) impermissibly infringe upon the free speech rights of plaintiffs (and others similarly situated) and because sections 18(1), (2), and (3) impermissibly discriminate between different types of speech and different classifications of speakers; and even if a restriction were permissible, in combination with the definition of "gift" in ORS 244.020, the sections are so vague and overbroad that sections 18(1), (2), and (3) unconstitutionally burden permissible speech.

ii. Article I, section 26 of the Oregon Constitution, because sections 18(1), (2), and (3) restrain inhabitants from instructing their representatives and from applying to the Legislative Assembly for redress of grievances.

iii. Article I, section 20 of the Oregon Constitution, because sections 18(1), (2), and (3) base the rights to speak freely on any subject whatever, to instruct representatives, and to apply to the Legislative Assembly for redress of grievances upon (a) whether the person lacks a legislative or administrative interest; and (b) whether, under ORS 244.020(5)(b)(F), the person is a government, an organization of which a public body is a dues-paying member, or a not-for-profit corporation that is tax exempt under section 501(c)(3) of the of the Internal Revenue Code and receives less than five percent of its funding from for-profit organizations or entities.

5.

Section 18 (4) of 2007 SB 10, which prohibits a person with a legislative or administrative interest from offering or giving gifts of entertainment to a public official or candidate for public office, violates:

i. Article I, section 8 of the Oregon Constitution and the First Amendment to the United States Constitution, because section 18(4) impermissibly infringes upon the free speech rights of plaintiffs (and others similarly situated) and because section 18(4) impermissibly discriminates between different types of speech and different classifications of speakers; and even if a restriction were permissible, in combination with the definition of "gift" in ORS 244.020 and the lack of definition of "entertainment," the section is so vague and overbroad that section 18(4) unconstitutionally burdens permissible speech.

ii. Article I, section 26 of the Oregon Constitution because section 18(4) restrains inhabitants from instructing their representatives and from applying to the Legislative Assembly for redress of grievances.

iii. Article I, section 20 of the Oregon Constitution, because section 18(4) bases the rights to speak freely on any subject whatever, to instruct representatives, and to apply to the Legislative Assembly for redress of grievances based upon (a) whether the person lacks a legislative or administrative interest; and (b) under ORS 244.020(5)(b)(F), whether the person is a government, an organization of which a public body is a dues-paying member, or a not-for-profit corporation that is tax exempt under section 501(c)(3) of the of the Internal Revenue Code and receives less than five percent of its funding from for-profit organizations or entities.

6.

Sections 24(1) and (2) of 2007 SB 10, which prohibit a person from providing an honorarium to a public official or candidate for public office in connection with official duties, violate:

i. Article I, section 8 of the Oregon Constitution and the First Amendment to the United States Constitution, because sections 24(1) and (2) impermissibly infringe upon the free speech rights of plaintiffs (and others similarly situated).

ii. Article I, section 26 of the Oregon Constitution, because sections 24(1) and (2) restrain inhabitants from instructing their representatives and from applying to the Legislative Assembly for redress of grievances.

7.

Because sections 18(1), (2), (3), and (4) and sections 21(1) and (2) of SB 10 are unconstitutional, any other provisions of SB 10 (including Section 17) that would, in the absence of those unconstitutional sections, impose restrictions that are the same as (or more stringent than) those restrictions imposed by sections 18(1), (2), (3) and (4) or sections 21(1) and (2), are also unconstitutional for the reasons provided above.

8.

Defendants deny the Center's and VanNatta's above-stated contentions. Defendants intend to enforce the above-referenced provisions of SB 10 on their respective operative dates.

9.

Pursuant to ORS 28.020, et seq., plaintiffs are entitled to declaratory relief as provided in paragraphs 4, 5, 6 and 7 herein.

10.

The Center and VanNatta have no plain, speedy, and adequate remedy in the ordinary course of the law and an injunction is therefore necessary to preserve their right to speak freely and to avoid irreparable harm.

INJUNCTION

11.

Plaintiffs reallege those allegations in paragraphs 1 through 10.

12.

The Center and VanNatta are entitled to an injunction permanently enjoining defendants from enforcing the above-referenced provisions as of their respective operating dates.

ATTORNEY'S FEES

13.

Plaintiffs reallege those allegations in paragraphs 1 through 12.

14.

Since at least 2000, the Office of Legislative Counsel has advised the Legislative Assembly that the Oregon Constitution prohibits the Legislative Assembly from adopting laws that limit the gifts that persons may give to members of the Legislative Assembly. A copy of one such opinion of the Office of Legislative Counsel dated March 10, 2000 is attached hereto as Ex. 3.

15.

The Center and VanNatta are entitled to recover their reasonable attorney fees from defendants because the Center and VanNatta are seeking to vindicate important constitutional rights applying to all citizens and not to vindicating individualized and different interests or any pecuniary or other special interest of their own aside from that shared with the public at large and because the above-referenced restraints on speech have been enacted despite the advice of the Legislature's official legal advisors.

16.

In addition, 42 USC section 1983 provides that every person who under color of any statute, subjects, or causes to be subjected, any citizen of the United States or person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the constitution, shall be liable to the other party injured in an action at law, suit in equity, or other proper proceeding for redress. Because of SB 10, plaintiffs will suffer impermissible deprivation of their federal constitutional rights. By virtue of their challenge to that deprivation, plaintiffs are entitled to an award pursuant to 42 USC section 1988 of their reasonable attorney fees, costs, and disbursements incurred herein.

WHEREFORE, the Center and VanNatta demand judgment as follows:

1. Declaring that sections 18(1), (2), (3), and (4) and 24(1) and (2) of 2007 SB 10 (and any other provision of 2007 SB 10 that would also impose the same or more stringent restrictions as those imposed by sections 18(1), (2), (3), and (4) and 24(1) and (1)) are void and unenforceable, as they are in violation of the Oregon Constitution and/or the United States Constitution;

2. Permanently enjoining enforcement of the above-referenced sections of Enrolled SB 10;

3. Awarding the Center and VanNatta their reasonable attorney fees and costs and disbursements incurred herein.

4. For such other and further relief as the court deems just and equitable.

DATED this 24th day of January, 2008.

DAVIS WRIGHT TREMAINE LLP

By ____________________

John DiLorenzo, Jr., OSB #80204
Gregory A. Chaimov, OSB #822180
Aaron K. Stuckey, OSB #95432
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1300 SW Fifth Avenue, Suite 2300
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Attorneys for Plaintiffs Fred VanNatta and Center To Protect Free Speech, Inc.

IN THE CIRCUIT COURT OF THE STATE OF
OREGON FOR THE COUNTY OF MARION

Case No. 07C-20464

FRED VANNATTA AND CENTER TO PROTECT
FREE SPEECH,
Plaintiffs,

vs.

OREGON GOVERNMENT ETHICS COMMISSION,
formerly known as the Oregon Government
Standards and Practices Commission, and STATE
OF OREGON,
Defendants.

DECLARATION OF FRED VANNATTA IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

I, FRED VANNATTA, declare as follows:

1. I am an elector, resident, and taxpayer of the state of Oregon, and the president of the Center to Protect Free Speech ("Center"), an Oregon not-for-profit corporation, that is dedicated to protecting rights guaranteed by the state and federal constitutions, including Article I, Section 8, of the Oregon Constitution. I make this Declaration based on my personal knowledge and in support of the Motion for Preliminary Injunction.

2. I am registered to lobby on behalf of the

Center to, among other things, seek the repeal of provisions of 2007 Senate Bill 10 during the Special Legislative Session scheduled to begin in February 2008. To achieve that end, the Center and I plan to participate in activities that 2007 Senate Bill 10, if permitted to be implemented and enforced, would prohibit and penalize including, but not limited to, obtaining the good will of public officials and candidates for public office through offering and providing to those public officials and candidates (and their families) (a) entertainment and business meals with an aggregate value of over $50 in connection with substantive political discussions, and (b) honorariums for speaking in connection with official duties.

3. To most effectively engage in lobbying activities for the February 2008 special session, the Center and I need to begin our lobbying sonn [*sic*] and, therefore, will suffer irreparable harm if the relevant provisions of Senate Bill 10 are allowed to become operative during the pendency of this case. The Center and I have no adequate legal remedy if Senate Bill 10 precludes us from exercising our free speech rights to lobby our elected officials to change unconstitutional laws.

I declare under penalty of perjury that the foregoing is true and correct, and that this Declaration was executed on this 22nd day of October, 2007, at Salem, Oregon.

Fred VanNatta

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MARION

Case No. 07C-20464

FRED VANNATTA AND CENTER TO PROTECT FREE SPEECH,
Plaintiffs,
vs.
OREGON GOVERNMENT ETHICS COMMISSION, formerly known as the Oregon Government Standards and Practices Commission, and STATE OF OREGON,
Defendants.

SUPPLEMENTAL DECLARATION OF FRED VANNATTA IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

I, FRED VANNATTA, declare as follows:

1. I make this Declaration for the purpose of supplementing that Declaration dated October 9, 2007, which was filed in support of Plaintiffs' Motion for Preliminary Injunction.

2. I am also registered to lobby on behalf of Roman V Ranch, LLC and Oregon Anglers and Oregon Anglers Research Society. Copies of my

lobby registration forms are appended hereto marked Exhibits 1 and 2.

3. I am the Managing Member for Roman V Ranch, LLC. Roman V Ranch, LLC is a limited liability company which includes my family members and owns approximately 1500 acres of timberland characterized as "small woodlands" in Oregon.

4. The Legislative Assembly has, over the past years, considered a variety of legislative proposals which would affect small woodland owners and would affect me in a direct economic sense. At the last session alone, the Legislative Assembly considered the following legislation which could have impacted or did impact the economic interests of small woodland owners, including me: Senate Bills 316 (relating to energy) and 514 (relating to special assessments) and House Bills 2115 (relating to forest products harvest taxation), 3044 (relating to fire suppression), 3364 (relating to tax credits for reforestation) and 3499 (relating to water quality).

5. In upcoming sessions, the Legislative Assembly is expected to consider further proposals relating to taxation, forest practices and energy (including bio-fuels) which will impact small woodland owners. I therefore intend to lobby on behalf of Roman V Ranch, LLC and myself for the purpose of defending my financial stake in the small woodlands and my limited liability company.

6. Oregon Anglers and Oregon Anglers Research Society are nonprofit organizations.

7. Because I have a legislative interest in proposals before the Legislative Assembly, I will be prohibited from engaging in the type of good will building activities referenced in paragraph 2 of my Declaration of October 9, 2007 to further political speech on my own behalf or on behalf of my clients.

I declare under penalty of perjury that the foregoing is true and correct, and that this Supplemental Declaration was executed on this 22nd day of October, 2007, at Salem, Oregon.

FRED VANNATTA